



Report on UOKiK activities in 2017



Office of Competition and Consumer Protection

Warsaw 2018

TABLE OF CONTENTS

UOKIK – KEY INFORMATION 4

FOREWORD 6



COMPETITION PROTECTION 8

- 1.1 Calendar of events **10**
- 1.2 Competition-restricting practices **14**
- 1.3 Contractual advantage **22**
- 1.4 Control of concentrations **23**
- 1.5 Court judgements **26**
- 1.6 State aid **27**



CONSUMER PROTECTION 30

- 2.1 Calendar of events **32**
- 2.2 Consumers' collective interests and standard contractual clauses **37**
- 2.3 Supervision over The Trade Inspection Authority **45**
- 2.4 Product safety and market surveillance **48**
- 2.5 Laboratories **52**
- 2.6 Fuel quality control system **52**
- 2.7 Out-of-court consumer dispute resolution **54**
- 2.8 Court judgements **55**
- 2.9 Cooperation with consumer organisations and consumer ombudsmen **58**



LEGISLATIVE WORK 62

- 3.1.1 National legislation **62**
- 3.1.2 International legislation **70**
- 3.1.3 Preliminary issues **72**

SOCIAL SURVEYS AND MARKET ANALYSES 75

INFORMATION AND EDUCATIONAL ACTIVITIES 76

INTERNATIONAL COOPERATION 80

- 3.4.1 Consumer protection **80**
- 3.4.2 Competition protection **83**

POSTSCRIPT 85

UOKiK – key information

About UOKiK

The President of the UOKiK

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

The UOKiK's top priority

is to ensure the highest possible level of consumer welfare by effectively protecting competition and the interests and rights of consumers, while respecting the principles of procedural fairness in relations with entrepreneurs.

Management in 2017

President of UOKiK:
Marek Niechciał

Vice President of UOKiK:
Dorota Karczewska
(consumer protection)

Vice President of UOKiK:
Michał Holeksa
(competition protection)***

Director General:
Maciej Jabłoński

* Consolidated text, Journal of Laws of 2018, item 798.

** In 2017, UOKiK also carried out activities financed from the European budget.

*** Bernadeta Kasztelan-Świątlik was the Vice President until 27 June 2017.

UOKiK IN NUMBERS – 2017



**PLN MN
BUDGET**



**PLN MN
IN PENALTIES**

imposed on traders, of which:

PLN 136.9 mn for competition-restricting practices: the highest penalty: PLN 60.7 mn

PLN 78.8 mn for practices that violate collective consumer interests: the highest penalty: PLN 25.8 mn



EMPLOYEES

including

193 lawyers

72 economists

36 chemists

29 food technologists

12 biotechnologists



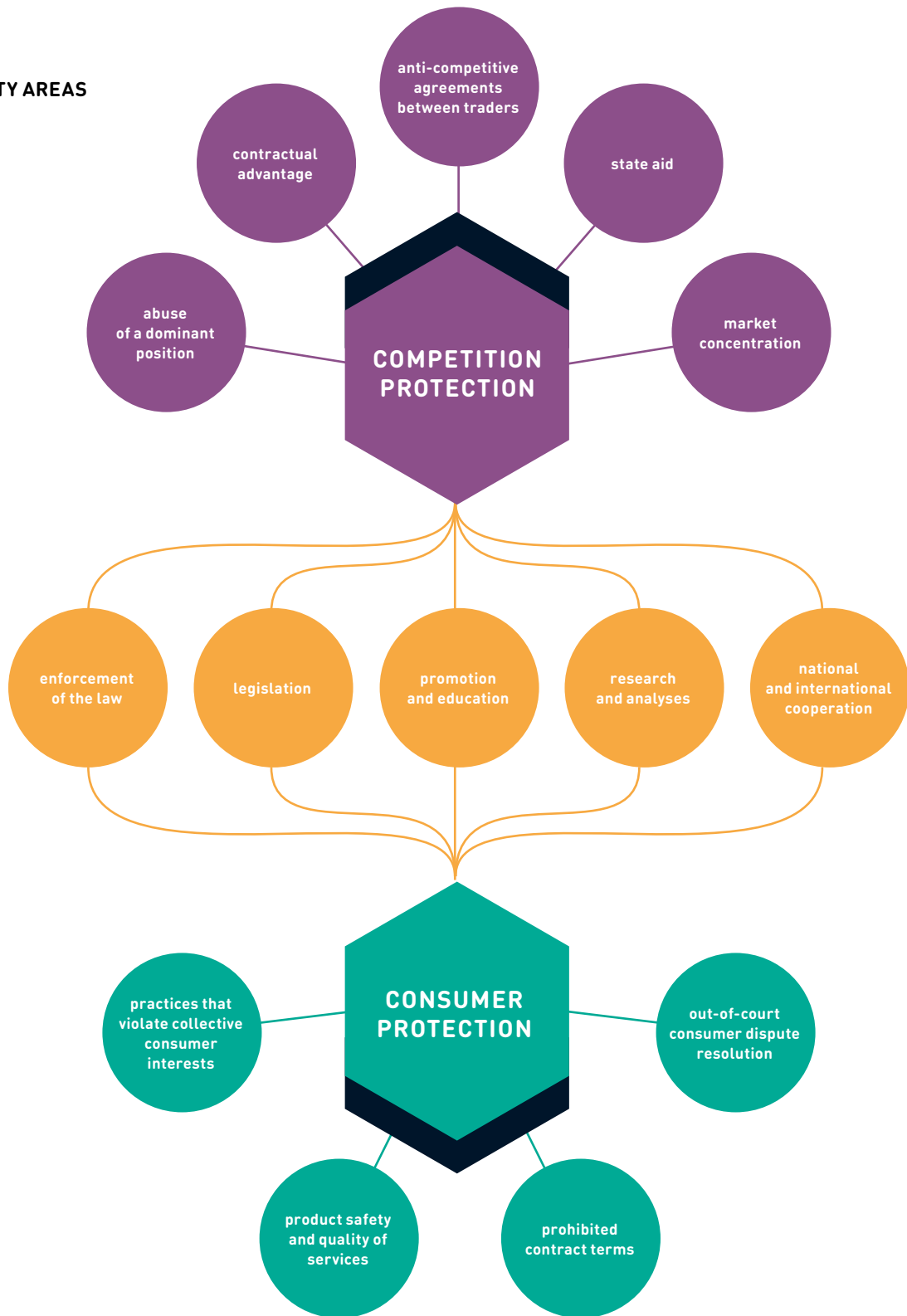
DECISIONS

including

703 decisions in consumer protection

229 in competition protection

ACTIVITY AREAS



FOREWORD

The first act introduced an amicable dispute resolution system adjusted to EU regulations. The new provisions make it easier for consumers to deal with a conflict with traders arising from rejected complaints. Within the boundaries of the new competence vested in the Office, UOKiK now keeps a register of entities authorised to carry out amicable dispute resolutions and monitors their activities. Moreover, a special information point was established to provide advice to consumers and traders. Out of court methods were promoted as part of the campaign "Make friends with arbitration!". Moreover, traders who through its conduct gave rise to the popularisation of amicable procedure were awarded for the first time.

The Act on contractual advantage introduced certain solutions on the agri-food market. UOKiK is now also empowered to deal with unfair commercial practices consisting in taking advantage of the position by the stronger party to the contract. The amendment to the legal provisions was accompanied by meetings with trader and lawyers as well as launching of an online platform devoted to the subject. Moreover, the Office has commenced its first explanatory proceedings in connection with notifications received by the office.

In 2017, there were also new obligations imposed on traders dealing with the financial market. The Act

on mortgage loans, which comprehensively regulates issues related to offering such products, entered into force. As postulated by UOKiK, the act also specified the issue of advertising consumer loans. The financial sector continues to be one of the priority consumer protection areas. In 2017, UOKiK has carried out activities pertaining to broadly understood alternative investments, unit-linked life insurance, mortgage loans, consumer loans, and pyramid schemes.

What is more, the Office's activities focused on the safety of the most vulnerable social groups: children and seniors. As in previous years, the Trade Inspection Authority carried out a number of inspections on children clothes and toys. Together with partners from the Visegrád Group as well as national customs offices, certain activities were carried out on the border which allowed to do away with hundreds of thousands of toys that do not meet the safety standards. UOKiK also conducted proceedings in connection with unfair practices carried out by traders that mainly concern senior customers. They comprise various exhibitions and impersonating current service providers. The protection of seniors was also devoted to an annual conference on the occasion of World Consumer Rights Day.

As for competition protection, the increase in the traceability of prohibited agreements continues to be a priority.

Consequently, in 2017, UOKiK issued a pilot programme for whistleblowers that comprises anonymous notifications in this regard. A number of national trainings devoted to detecting tender collusion has also been organised and carried out. The purpose of these activities is to increase the inflow of information on irregularities and deal with unlawful practices in a more efficient way. As in previous years, the Office analysed many applications concerning market concentration to prevent emergence of entities with a market power that could be harmful to the competition. As for state aid, it should be emphasised that the case concerning a multimillion support from the operator of the Wielkopolska Highway gave rise to a settlement which is beneficial for Poland. There were also intensive works on streamlining the reporting system "SHRIMP".

As in the previous years, in 2017 the Office was active on an international forum. The Office hosted meetings involving Polish authorities and the Directorate General of the European Commission for Competition. Cooperation with national partners was strengthened as well, in particular by shaping the legal environment that favoured consumers and free competition.

1.1
Calendar of events

1.2
Competition-restricting
practices

1.3
Contractual advantage



COMPETITION PROTECTION

UOKiK's activities concern combating any unfair practices which have a negative impact on the condition of competition, which is a foundation for market growth. The Office removes anti-competitive agreements between traders, abuse of a dominant position, along with an unfair use of a contractual advantage. It also controls concentration of undertakings and monitors state aid.

1.1
Calendar of events



1.2
Competition-restricting practices



1.3
Contractual advantage



FEBRUARY

08.02
**Economy of the competition law
– the commencement of a series
of workshops**

The first meeting devoted to this subject and organised by UOKiK, Compass Lexecon, and the Competition Law Association (SPK). Subsequent meetings were held in June and October.

MARCH

07-08.03
**Visit of the Directorate General
of the European Commission
for Competition**

A meeting between Polish authorities with a delegation of the Directorate General for Competition. The visit revolved around key state aid issues pertaining to Poland and conducted before the EC.

16.03
**Guidelines on limitation
of the right of access**

UOKiK has come up with a manual for submitting applications for limiting the right of access in the proceedings, e.g. on competition-restricting practices and imposition of fines. The Guidelines have been published on the Office website.

APRIL

10.04
**Commencement of the
whistleblower programme**

The programme consists of anonymous notifications from persons aware of prohibited arrangements made between traders. The purpose of the programme is to increase the traceability of collusion on the market.

10.04
**Launch of the online platform
www.konkurencja.uokik.gov.pl**

The website is a compendium of the anti-trust law. It provides information on, inter alia, leniency and whistleblower programmes.



MAY

10.05-12.05

Meeting of the International Competition Network (ICN) – a reward for UOKiK

The President of UOKiK received an award of the World Bank and the ICN for the best information and educational project in the field of competition law. The prize was awarded for the guide for companies operating in the water and sanitation industry.

11.05

Concentration – shopping centres

A consent to take control by Echo Polska Properties over several shopping centres which was granted after a change in the concentration application (decision DKK-74/2017). In connection with the market research scheduled by UOKiK, the company abandoned its plan to take over the shopping centre in Kalisz.

JUNE

20.06

Meeting on a contractual advantage

The meeting with traders in connection with the upcoming entry into force of the Act on counteracting the unfair use of contractual advantage.¹ The role of UOKiK and of the Agricultural Market Agency (currently: National Centre for Agricultural Support) was discussed.

20.06

Launch of the online platform www.przewagakontraktowa.uokik.gov.pl

The platform describes contractual advantage in the form of questions, answers, and infographics.

21.06

Explanatory proceedings with regard to online trade platform

The purpose of the proceedings is to verify whether Allegro favoured its own online store at allegro.pl. In order to obtain evidence, UOKiK conducted a search of the company at the turn of June and July.

27.06

Entry into force of the Act on Private Enforcement²

The new law allows consumers and traders to pursue private claims in the event of losses resulting from prohibited agreements or abuse of a dominant position.

1. The Act of 15 December 2016 on Counteracting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products (Journal of Laws of 2017, item 67).

2. The Act of 21 April 2017 on Private Enforcement (Journal of Laws of 2017, item 1132).



JULY

12.07 The Act on Counteracting the Unfair Use of Contractual Advantage

The Act in question grants UOKiK new competence in counteracting practices of this type. The tasks were assigned to the Branch Office of UOKiK in Bydgoszcz.

17.07 Commitment to give back fees charged unjustly – the energy market

The case concerned Heat Energy Enterprise Termowad Sp. z o.o. which was charged by UOKiK with an abuse of a dominant position by defining the excess of ordered heat power in an incorrect way. Decision of the Office (RKR-5/2017) took into consideration the company's commitment to refrain from this practice and give back any and all fees that were charged unjustly.



AUGUST

18.08 Contractual advantage – the first explanatory proceedings

The commencement of the first explanatory proceedings based on new rights in the scope of contractual advantage. The purpose of the procedure was to check whether sugar producers resort to practices involving an unfair use of contractual advantage against the suppliers of sugar beets.

24.08 Regaining state aid – decision of the European Commission

The decision on compensation paid to Autostrada Wielkopolska S.A. The Commission shared Poland's position, and namely that the compensation was excessive. The operator of the A2 Highway will have to give back a total of PLN 895 mn of undue state aid (with interest).



SEPTEMBER

06.09 Commencement of trainings "Competition Law in Public Procurement Tender"

A meeting in Opole marked the beginning of 32 free-of-charge trainings for the employees of central and local government administration that were conducted until November 2017 all across Poland. Over 1360 people received trainings. Moreover, an e-learning platform has been launched.



OCTOBER

04.10

Judgement of the Supreme Court – sustaining the fine for prohibited agreements

The Supreme Court dismissed the cassation appeal against the decision of UOKiK of 2011 concerning the conclusion by Inco Group of agreements with the distributors of household chemicals and garden fertilisers. Consequently, a fine of over PLN 2 mn was sustained.

06.10

Meeting of the Working Group of the European Commission and of Member States on Implementation of State Aid Modernisation

It was a meeting of a group which serves as a platform for exchanging information and experience on the implementation of state aid modernisation.

04.10

Conditional approval for concentration on the electricity market

The case concerned taking control over EDF Polska by PGE. UOKiK adopted a condition that eliminates the threat of restricting competition on the market (DKK-156/2017).



NOVEMBER

7.11

Visit paid by representatives of the Directorate General of the European Commission for Competition

The purpose of the meeting was hold a general discussion on matters pertaining to the protection of competition in Poland and in cooperation with the EC in this regard.

13.11

Workshop: “State aid – recent legal condition and issues pertaining to the subject”

An event for experts from central and regional institutions dealing with state aid.



DECEMBER

28.12

The highest fine in the year for anti-trust practices

The issue concerned a collusion between the manufacturers of wood-based panels used e.g. in furniture production (DOK-3/2017). The companies arranged prices with each other and exchanged confidential information, which affected the competition. The arrangement comprised five traders, with the highest fine of over PLN 60 mn being imposed on Kronospan Szczecinek. The fines imposed on the collusion participants totalled over PLN 135 mn. Had it not been for leniency, the fine would have amounted to PLN 200 mn and would be the second highest fine ever imposed by UOKiK.

1.2

Competition-restricting practices

Competition-restricting practices comprise illegal action taken by traders leading to a disruption in the mechanisms of a free market. They can take the form of an arrangement of at least two independent traders or abuse of a dominant position by a trader on a given market.

Anti-trust arrangements can be as follows:

horizontal (the most severe ones are cartels) – if they pertain to arrangements made by competitors, i.e. traders conducting operations whose level of trade of goods/services is the same (e.g. manufacturer-manufacturer), or **vertical** – if they concern arrangements between traders conducting operations at different levels of trade (e.g. manufacturer-seller). The subject of arrangements may involve e.g. fixing prices, tender offers and market division.³

The law also prohibits **abuse of a dominant position** in the event of traders holding a significant market power. The practices of this type can take the form of unfavourable cooperation conditions, getting rid of competitors or preventing new traders from entering the market.⁴

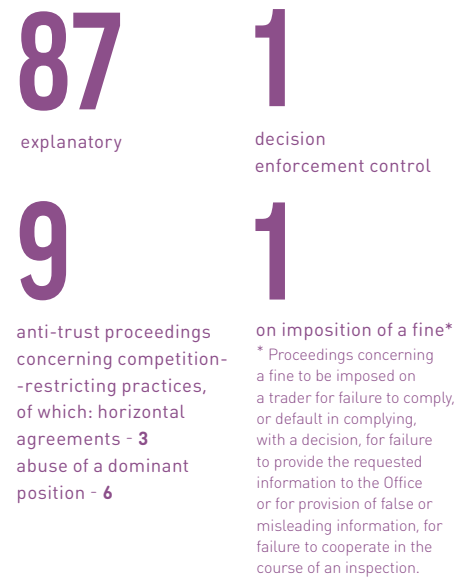
UOKiK monitors the market and analyses any and all warnings about potential irregularities. On this basis, the Office carries out proceedings, which are one of the available interventions. These proceedings may

e.g. result in an order to discontinue a harmful practice and a fine imposed on a trader. It is also possible to make an amicable settlement of the proceeding with a commitment decision. Traders may also make requests for decreasing the amount of potential financial sanctions through a procedure called “voluntary submission to penalty”. This essentially means pleading guilty to the charges and waiving their right of appeal against the decision. UOKiK encourages parties involved in anti-competitive arrangements to use leniency or leniency plus programmes which are highly beneficial for them because it allows them to decrease the fine or be relieved from it altogether.

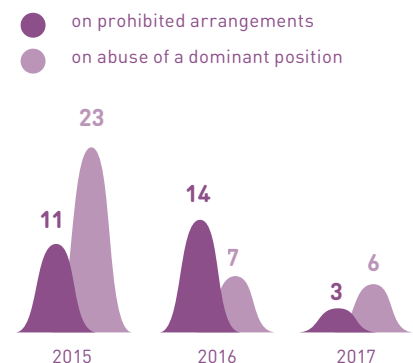
Prior to issue of the decision confirming the practice or imposing a fine, UOKiK presents detailed justification of charges to the trader (SUZ). This allows the party to respond to these before the proceedings are concluded.

The proceedings against a trader are usually preceded by explanatory proceedings which aim at an initial identification of a possible violation. Within the course of explanatory proceedings, or regardless of any other activities in progress, UOKiK may issue a competition protection call (so-called soft call). This means in practice a call to provide explanations or refrain from a specific activity. The interventions of this type are applied in case of activities which are not so harmful. Those interventions allow to quickly remove

New proceedings – 2017



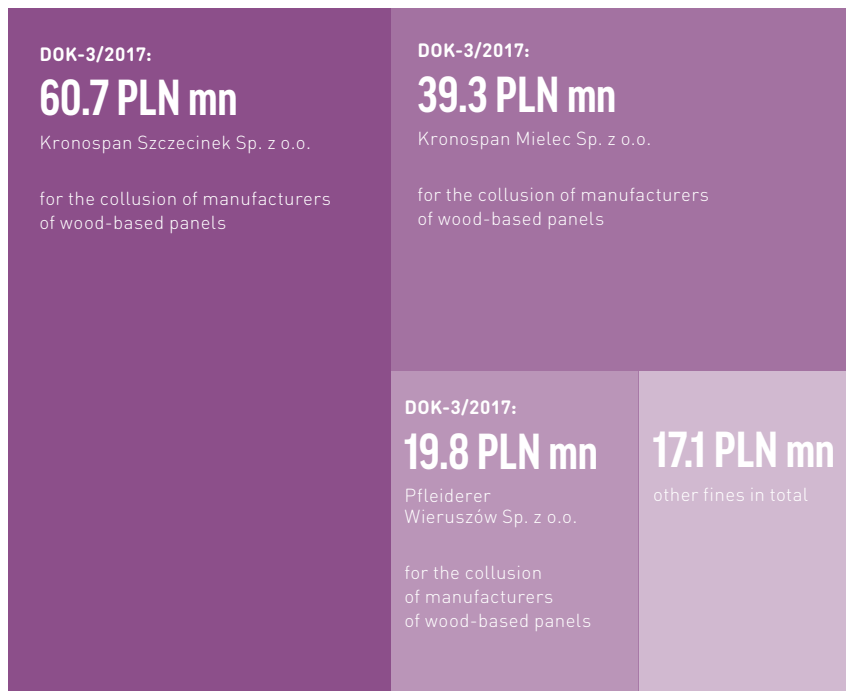
Initiated proceedings in years 2015-2017



In recent years, the general number of proceedings concerning anti-trust matters was on a decline. This results from soft calls made to entrepreneurs in cases of less serious law infringements.

Highest fines per decisions – 2017 – competition-restricting practices

136.9 PLN mn
total fines



such activities from the market in comparison with official proceedings. Traders usually comply with calls made by UOKiK. The Office may also conduct an inspection or search in the registered office of a trader in order to obtain evidence.

Leniency and leniency plus programme

An entrepreneur who has entered into an anti-competitive agreement may seek **a full exemption from or reduction of fines**. In addition to admitting to participation in the agreement, the entrepreneur must provide information

3. Examples of competition-restricting practices are specified in Art. 6 sec. 1 of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws of 2018, item 798, as amended, hereinafter referred to as "ACCP"). However, the law provides for limited exceptions to the general ban, so-called agreements of minor importance and block exemptions. All the regulations of the Council of Ministers concerning the exemptions of certain agreements from the general ban on competition-restricting agreements are available on UOKiK's website.

4. A sample catalogue of practices constituting an abuse of a dominant position is given in Article 9 (2) of the ACCP.

5. The Act of 21 April 2017 on Private Enforcement (Journal of Laws of 2017, item 1132).

6. The Act implements Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ EU 349, 5.12.2014, p. 1-19).

The Act on private enforcement

UOKiK decisions on competition-restricting practices do not concern compensation paid to injured parties for unlawful practices. Pursuing civil law claims is now facilitated by the Act on private enforcement of competition law, which entered into force on June 2017.⁵ The new law implementing the EU directive⁶ has been created by the Ministry of Justice in cooperation with UOKiK. Anyone who has suffered a loss as a result of unlawful practices will be able to bring an action, including consumers, counterparties, and competitors of the undertakings which have infringed the provisions of competition law. The claims will be examined by regional courts, regardless of the value of the claim. The claims may concern, inter alia, any practices which UOKiK regards in its decisions as anti-competitive agreements, abuse of a dominant position, and activities not subject to the proceedings of the Office. The issue of private enforcement was discussed in one of the workshops co-organised by UOKiK as part of the series on economy in the competition law.

1.1 Calendar of events

1.2 Competition-restricting practices

1.3 Contractual advantage

Issued decisions – 2017



Other activities – 2017



and evidence indicating the existence of an illicit practice.⁷ Of all decisions issued in 2017, 3 decisions took into account the information obtained through leniency.

There is also an additional solution for collusion participants – leniency plus programme. With this solution, the entrepreneur who files the second or subsequent application may receive **an additional reduction of the fine by 30%**, on condition that it informs the Authority of another collusion in which it was also involved. In the latter case, the entrepreneur will have the status of the first applicant and may be offered total immunity from fines.

Application of EU competition law

The ban on competition-restricting practices results not only from Polish anti-trust laws, but also from the provisions of the Treaty on the Functioning of the European Union (“TFEU”, “Treaty”). When entrepreneurs affect through their action the trade between EU Member States, EU regulations impose the obligation on the authorities and courts of the Member States to apply the Treaty directly (Articles 101-102 TFEU) in parallel with the provisions of national competition law. In 2017, UOKiK initiated one proceeding in which it applied in parallel Polish and EU regulations, and made one decision in this respect.

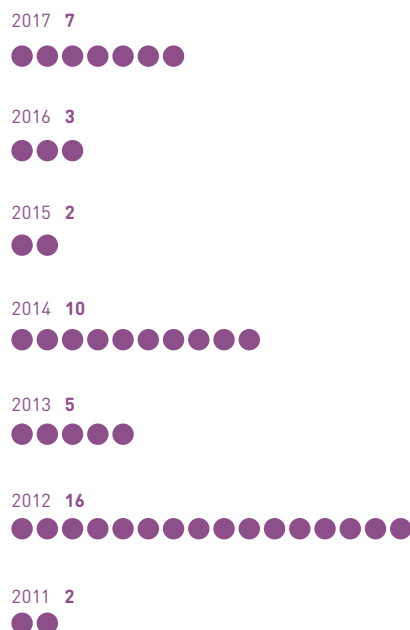
Overview of activities – illicit agreement

Whistleblower programme

UOKiK’s top priority is still to **increase the rates of detection of illicit agreements**, especially between competitors. These are competition-restricting practices which are the most harmful for the economy, directly increasing the prices of products and services. Due to their secret nature, it is very difficult to spot them – often there is lack of evidence, such as contracts or written arrangements. In order to obtain such evidence, the Office initiated in 2017 a whistleblower programme which consists in obtaining anonymous information from persons aware of such collusions. There

1.4 Control of concentrations

The number of leniency applications



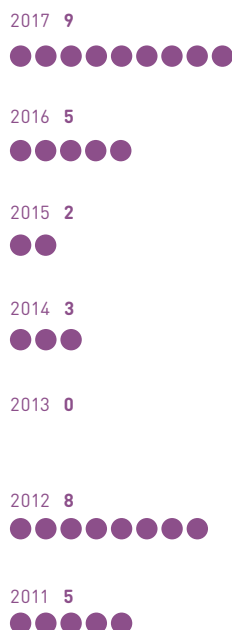
is a **special phone number and e-mail address** which allow whistleblowers to send alarming news. For detailed information, please visit www.konkurencja.uokik.gov.pl.

Competition law in public procurement – an educational project

In 2017, the Authority also carried out a number of on-site trainings under the project “Knowledgeable Contracting Authority – Competition Law in Public Procurement Tenders”. The purpose of the project was **to increase the awareness of central and local government administration staff in terms of tender collusion**.⁸ Moreover, a special e-learning platform was launched. For detailed information on this matter, please refer

1.5 Court judgements

Searches*



* Indicates the number of proceedings in which a search was conducted. Until 17 January 2015, searches could be conducted in the course of control only. A new law entered into force on 18 January 2015, under which a search is now separated from a control.

to the chapter concerning information and educational activities.

Evidence from conducted searches

A search of company premises is a tool which is used in situations where it is suspected that the entity in question is in possession of evidence which may be relevant to the case. It may only be conducted **upon court authorisation**. A search is usually assisted by Police officers. In the course of a search, the undertaking is under an obligation to grant the employees of the Office access to its buildings and premises as well as to make available all documents and data carriers. In 2017, **the Office has already used this option nine times in order to obtain the necessary evidence**.

1.6 State aid

EXAMPLES

1. The search of the registered office of the Allegro Group – in connection with explanatory proceedings the Office has received numerous complaints in which various undertakings pointed out the changes made by the Company to its allegro.pl sales platform. The changes in question allegedly resulted in the products sold on this platform by the official Allegro store always being listed as “best match” in search results. The purpose of the proceedings is to verify whether the Company favoured its own online store at allegro.pl.

2. Searches in the registered offices of fitness gym chain and premises of Benefit Systems. The collected evidence indicates that a dozen or so traders could have resorted to competition-restricting agreements which consist in dividing the market into activities regions.

3. The search of the registered office of Veolia Energia Warsaw on possible collusion by traders dealing with thermal energy production, supply and trade.

7. For detailed information, please visit the UOKiK website: http://uokik.gov.pl/program_lagodzenia_kar2.php

8. The project is co-financed by the European Social Fund as part of the Operational Programme Knowledge Education Development 2014-2020.

Quality management systems – ISO

Collusions between traders who compete with each other may also involve **a market allocation** scheme, e.g. according to customers.

Such practices were identified with Dekra Certification and Istituto Italiano del Marchio di Qualita (IMQ) – companies which offer management system certification services. Institutions which were interested in obtaining ISO certificate submitted a request for proposal to several traders providing such services. At the same time, they asked to specify another certification unit to which they could also submit this request for proposal. Dekra and IMQ agreed that they would recommend each other to those customers whom one of the companies was willing to acquire. At the same time, they arranged which company would submit a counter bid, i.e. a proposal with a higher price that would be less appealing to the customers. In some cases, companies agreed, in the first place, which entities the services would be sold to, and only then were they exchanging information about the expected prices. The prohibited practice lasted 4.5 years. UOKiK obtained evidence of the collusion as a result of a search conducted in the registered office of Dekra and that of IMQ's branch in Poland, and **thanks to cooperation with traders as part of the leniency programme**. Dekra Certification avoided the sanctions altogether because it was the first company to have applied for leniency. IMQ made the same decision several days later, which is why the amount of the fine in this case totalled PLN 461 thousand, which was half of the amount the company would have otherwise paid.⁹ Both companies were

UOKiK imposed fines totalling over

135

PLN mn on the companies involved in the collusion

able to take advantage of the leniency programme as both were fully cooperating with UOKiK. The decision of the Office is final.

Wood-based panel market

In 2017, UOKiK made a decision on manufacturers of wood-based panels used e.g. in furniture production (DOK-3/2017). The collusion comprised **5 traders**: Kronospan Szczecinek, Kronospan Mielec, Pfleiderer Group, Pfleiderer Wieruszów, and Swiss Krono. **For almost 4 years, these companies fixed prices and exchange confidential information**, e.g. about the date on which the prices would rise and sales volume. Warnings from the market played a crucial role in detecting the collusion. The Office gathered the necessary evidence as part of control with a search of the registered offices of the traders. Detailed information on the collusion has also been provided by Swiss Krono as part of the leniency programme. As was demonstrated by the Office, the traders resorted to illicit arrangements as part of meetings of

phone calls. Presidents and members of management boards, along with commercial sale directors would meet e.g. in the registered offices of the companies, at fairs, and airports. Thanks to the exchange of confidential information, they got rid of the uncertainty as to the conduct of their relevant competitor. Consequently, they decreased the level of competition between each other and strengthened their negotiation stance in relation to recipients. UOKiK imposed fines totalling over PLN 135 mn on the companies involved in the collusion,¹⁰ excluding Swiss Krono which contributed to the identification of the collusion as part of the leniency programme. It should be indicated that the furniture industry generates nearly 2% of the Polish GDP, which is why the collusion could have had a negative impact on the Polish economy. **The proceedings in this matter were also carried out based on EU regulations, with the final decision having been consulted with the European Commission.** The gathered material showed that the practices applied by the traders could have affected trade between EU Member States. The company lodged an appeal with the Court of Competition and Consumer Protection (SOKiK).

Public transportation

Collusion between tender participants may take many forms. Traders very often resort to **a mechanism of bid submission and retraction**, i.e. cancellation by the winner of the tender to sign the contract with the contracting authority, which means that the contracting authority needs to conclude an agreement with an entrepreneur offering a higher price. Traders arrange among each other which of the bidders is about to win the next tender.

In 2017, UOKiK found that a tender for public transportation in Zgorzelec featured a collusion between bidders. The proceedings were initiated in connection with a complaint from the Regional Police Headquarters. Following the analysis of the materials obtained, the Office concluded that two undertakings: Bieleccy from Bogatynia and FHU Bielawa from Leśna (Lower Silesia Province) have engaged in collusion. In the present case, the undertakings have applied a mechanism of bid submission and retraction. If it turns out that their bids were among the two best ones, the winner of the tender subsequently retracted its bid on purpose, in order for the municipality, i.e. the contracting authority, to be forced to select the second-best (and therefore more expensive) bid submitted by the second of the two colluding undertakings. The difference between the two bids amounted to more than PLN 300 thousand. UOKiK imposed a fine of nearly PLN 130 thousand on the initiator of the practice¹¹. The decision is final.

Computer equipment and software

UOKiK found that a mechanism of bid

submission and retraction was also the case for two undertakings involved in the sale of computer equipment and software. The proceedings concluded in 2017 showed that Optimus from Sieradz and BKH-System from Żagań **tried to influence the results of 4 tenders** that took place in the years 2013-2015. Their activities had a negative impact on two tenders (for Łódź and School Complex in Świecie). Once one of the undertakings won the tender, **it would intentionally fail to comply with official requirements**. As a result, the contracting authority was forced to choose a bid that would be less beneficial for it. In other cases (the municipality of Kłodzko, the Marshal's Office in Toruń), the participants of the collusion did not win the tenders. However, it was proved by UOKiK that they jointly prepared their bids. This is evidenced by e-mails between the undertakings, which were found by the Office during inspections at their registered offices. The Office of Competition and Consumer Protection imposed fines on the participants of the collusion totalling nearly PLN 57 thousand. The undertakings appealed against the decision.

Services for the military

The discovery of collusions, warnings from tender organisers play a crucial role as they are able to observe directly any alarming action on the part of the bidders. Thanks to a complaint submitted by the Military Economic Department in Poznań, UOKiK undertook activities in connection with **a tender for seasonal boiler service**. The proceedings of the Office showed that there has been a tender collusion between Megatherm, Śmigiel Przemysł Multi-Service Enterprise, and "Śmigiel" Multi-Service Enterprise. The first two undertakings took part in the tender as a consortium. The lowest bid was made by "Śmigiel". The Office found that the company failed to complete the official requirements on purpose. Thus, the contracting authority chose the next in order and the more expensive offer of the consortium. The Office imposed a penalty on the participants in the tendering collusion amounting to almost PLN 80 thousand. The traders appealed against the decision.

The Tactical Aviation Base in Świdwin organised **tenders for renovation and construction services**. In case of 3 tenders, the Base had doubts as to 2 companies: DAR-BUD in Rąbino and BUD-MAX in Świdwin. The proceedings conducted by UOKiK showed that the contracting authority's doubts were justified. In each of the 3 tenders, the contractors applied a mechanism of bid submission and retraction – they offered various prices, whereas the bid with the lowest price called for completion of the



9. Decision RWR-13/2017.

10. Decision DOK-3/2017.

11. Decision RWR-6/2017.

official requirements. If contractors' bids were among the two best ones, the bid with the lowest price was not completed in terms of official requirements, and once that contractor was removed from the tender, the contract was awarded to another collusion participant that offered the higher price. The traders' position was negatively affected by the fact that in case of tenders in which the arrangement of the bids did not guarantee that the contract would be awarded to one of the collusion participants, there were no problems with the official requirements. In addition, the traders knew each other as they cooperated with themselves on more than one occasion as part of subcontracting activities. UOKiK found that the traders manipulated their bids on purpose in order to generate higher gains than in a situation where they would be forced to win fair and square. A fine of over PLN 20 thousand in total was imposed on the participants to the collusion.¹² The amount of sanctions was reduced due to the fact that the practice was only local and lasted several months. The decision is final.

Towing services

Information sent from the Province Police Headquarters in Opole allowed UOKiK to discover a tender collusion concerning vehicle towing and parking. The notification pertained to **two entrepreneurs from the Opolskie province**: Auto Czok from Kępa and P.W. Warm from Niemodlin. The Office found that the illicit practices covered not only tenders organised by the Headquarters, but also those organised by the District Governor's Office in Opole. The companies referred to above have been applying the practices in question at least from 2013.

Resolution of the Supreme Court (SN)

The issue of sewage and water supply connecting units has been debatable for many years. The definitions specified in the Act on Collective Water Supply and Collective Sewerage Services. Up to now, UOKiK maintained its position that the connecting units do not comprise any pipes outside the border of the recipient's property. A similar position with regard to a sewage connecting unit was expressed by the Supreme Court in 2017.¹⁴ This meant that a person applying for a connecting unit should conduct at their own cost works related to the construction, connection, and maintenance of the section only within the boundaries of their own property. Many sewage companies expressed a different view on this matter. Therefore, they demanded that recipients also finance works outside their houses and the network, e.g. earthworks through a road, construction of pipes and their connection to the network. UOKiK considered these practices an abuse of a dominant position. Until 2014, a number of courts essentially maintained the position of the Office, but in 2017 the Supreme Court adopted a different stance. According to the resolution issued by the SN,¹⁷ a sewage connecting unit is a pipe connecting the internal sewage installation ended with a manhole on the property of the recipient of sewage network services, on the section from the manhole to the sewage network, and the sewage connecting unit – the whole length of the pipe connecting the sewage network with the internal sewage installation on the property of the recipient of services. **This is a different interpretation of the provisions than the one indicated in the previous resolution of the Supreme Court on this matter and UOKiK case law.**

The entrepreneurs have been consulting each other before placing a bid. Acting in collusion, the companies have agreed that when one of them was awarded the given contract, the other would serve as the subcontractor for such contract. As a result, **they divided the market** as each one of them continued to operate on its "own turf", without the need to compete against the other. An example may be the tender organised by the District Governor's Office in 2013. The entrepreneurs placed bids which not only listed the same prices, but were also missing the same documents. These deficiencies were later remedied at exactly the same time and, with only one exception, the bids still offered the same prices for the services listed therein. The winner sub-

contracted the works to the other participant of the tender. UOKiK found that this practice was carried out in a certain arrangement as it would have been less than likely for the prices offered by 2 different traders to be equal down to the last penny in case of each of the 21 services ordered. At the same time, their bids also contained the same errors and have been filed at exactly the same time. The tender collusion participants received a fine of over PLN 170 thousand.¹³ UOKiK has also ordered the cessation of the prohibited practices, having determined that the entrepreneurs in question were in fact still using similar methods when participating in public tender proceedings. The issue has been appealed against with SOKiK.



Overview of activities – abuse of a dominant position

Water and sanitation market

In 2017, UOKiK found that Juchnowiec Kościelny municipality abused its dominant position on the local collective water supply and sewage disposal market. The matter pertained to agreements concluded with private investors who would build water and sanitation equipment (e.g. hydrants, water meters) using their own financial means, and subsequently connect them to the network administered by the municipality. The municipality concluded agreements for a paid takeover of such equipment. UOKiK had reservations as to the provisions referring to **abnormally low fees for the takeover of equipment**, inadequate to the construction costs borne by the investors. The agreements were non-negotiable, so **the price was fixed unilaterally, with loss on the part of investors**. Thanks to its monopolistic position, the municipality was able to derive unreasonable benefits to the disadvantage of another party to the contract. The Office ordered the cessation of the troublesome terms and conditions of the agreements in question and imposed a fine of over PLN 22 thousand.¹⁴ The municipality appealed against the decision.

UOKiK carried out similar proceedings against Regional Water Supply and Sewerage Company in Brzesko. The issue concerned abuse of a dominant position on the local market for water supply and sewerage infrastructure management in several municipalities, and specifically the terms and conditions of agreements concluded with persons applying for connection to the network. The applicants were obliged to build the missing section at their own cost and later transfer the ownership to the company free of charge. This meant in practice **transferring the network construction costs to the counterparties** that are imposed under a statute on water supply and sewerage enterprises. What is more, the enterprise used ready-made, unilaterally drafted agreement templates which could not be negotiated by potential customers. The decision took into account the entrepreneur's commitment to cease the practices in question and return in whole the costs borne by the recipients to construct the water supply and/or sewerage networks. In view of these facts, UOKiK withheld from imposing a fine.¹⁵ The decision is final.

Energy industry

Termowad is an energy enterprise dealing with the transmission, dis-

tribution, and sale of heat to final recipients located in the municipality of Wadowice. UOKiK charged the company with an abuse of a dominant position by **charging fees for extending the ordered heat power based on an incorrect legal basis**. The pattern in use only indicated an incorrect designation by the recipient of the ordered heat power and not its extension, as was wrongly interpreted by the company. Moreover, the recipients were suggested to sign annexes that increased the ordered heat power in exchange for the company refraining from charging any additional fees in the event of extension of the ordered power. The Office found that this conduct constitutes an illicit attempt to exert pressure on service recipients that increased their financial obligations. In a decision made in 2017, the company committed itself to refrain from applying the incorrect fee charging method and to introduce appropriate clauses in the agreement templates used by the company. At the same time, the current trading partners were offered to replace the challenged fee charging methods provided for in the contracts with new ones that would be correct.¹⁸ Moreover, the company returned all additional fees to its customers that were charged for extending the ordered heat power. The decision is final.

12. Decision RGD-5/2017.

13. Decision RKT-4/2017.

14. Decision RLU-4/2017.

15. Decision RKR-7/2017.

16. File reference number III CZP 79/07.

17. File reference number III SZP 2/16.

18. Decision RKR-5/2017.

1.3 Contractual advantage

A contractual advantage pertains to the supplier's relationship with the buyer in trade in agricultural and food products. It occurs when there is a considerable disproportion between the two in terms of economic potential and, at the same time, the weaker party has insufficient opportunities to sell or buy agricultural or food products from other traders. The new act on counter-acting this phenomenon has entered into force on 12 July 2017.¹⁹ UOKiK is now vested with **new powers** related to proceedings aimed at removing unfair trade practices in this regard.²⁰

UOKiK also receives notifications from entrepreneurs who suspect they are the object of a contractual advantage. The Office may only intervene **to protect public interest**. Moreover, an intervention is possible only where the total value of the turnover between the supplier and the recipient exceeded the amount of PLN 50 thousand during any of the 2 years preceding the year in which the proceedings are initiated and where the turnover of the supplier or of the recipient which resorts to the practices in question exceeded PLN 100 million during the year before the year in which the proceedings are initiated. UOKiK is able to order the discontinuation of the illicit practice, as well as to accept a commitment from the entrepreneur to remove the illicit practices or to remedy their consequences. The Office also has the power to impose on a trader a fine of no more than 3% of its turn-

over realised in the year before the year in which the fine is imposed.

Overview of activities

In the second half of 2017, UOKiK carried out its first explanatory proceedings and controls concerning a contractual advantage and applied soft calls traders. The Office examined, inter alia, **a significant increase in the price of butter**. The explanatory proceedings concerned the operations of the largest store chains such as: Lidl Polska, Jeronimo Martins, Tesco Polska, Auchan Polska, Carrefour Polska. UOKiK also analysed the method of fixing **milk prices** in commercial relations between 15 processing entities and their suppliers. It was also verified whether **sugar manufacturers** are resorting to practices involving an unfair use of contractual advantage against suppliers of sugar beets. Moreover, UOKiK carried out explanatory proceedings on the situation **on the industrial apple purchase market** in connection with a sudden decline in acquisition prices in Sandomierskie district.

¹⁹. The Act of 15 December 2016 on Counter-acting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products (Journal of Laws of 2017, item 67).

²⁰. The cases concerning a contractual advantage are considered by the Branch Office of UOKiK in Bydgoszcz.

UOKiK activities in numbers – 2017

10

investigations

4

controls in the
course of explan-
atory proceedings

19

notifications from
undertakings

13

soft calls to
entrepreneurs

**The legislation changes
were accompanied by
information activities
conducted by UOKiK,
including meetings with
entrepreneurs. The Office
launched a website
offering comprehensive
information in this regard –
[www.przewagakontraktowa.
uokik.gov.pl](http://www.przewagakontraktowa.uokik.gov.pl).**

**For more information
on this issue, see part 3.**

1.4 Control of concentrations

UOKiK controls the largest transactions that have or may have an impact on competition in the Polish market. The purpose of these activities is to eliminate the risk of emergence of a new entity with a market power threatening or eliminating competition.

An intention to concentrate must be reported if the total global turnover of entrepreneurs participating in the concentration in the financial year preceding the reporting year exceeds the equivalent of EUR 1 billion or if the total Polish market turnover of entrepreneurs participating in the concentration in the financial year preceding the reporting year exceeds the equivalent of EUR 50 million.

After the proceedings, UOKiK may:

- **consent to the concentration** – if, as a result, competition on the market is not significantly impaired, in particular by the emergence or strengthening of a dominant position on the market;
- **consent to the concentration conditionally** – if, after the fulfilment of the conditions, the main objective is achieved;
- **give extraordinary consent** – if the transaction, despite its anti-competitive effect, contributes to the economic development or technical progress or has a positive impact on the national economy;
- **prohibit the transaction** – if it results in a significant restriction of competition on the market, in particular by the emergence or strengthening of a dominant position on the market.

The analysis of applications in concentration cases follows a two-step procedure, where simple cases are considered within one month and for more complex cases this time limit is extended by four months. In 2017, **nearly 97% of decisions were issued at the first stage.** The Office expresses concentration approvals in the majority of cases. In 2017, only in a dozen or so cases the applications were either returned to entrepreneurs (due to formal deficiencies, among others) or withdrawn (due to UOKiK's reservations, among others). The Office also carries out explanatory proceedings concerning the level of concentration in the economy and determination of the obligation to report concentration.

Failure to provide the Office with information in the course of a proceeding in a concentration case, or effecting a concentration without the consent of the Office is punishable by fines. In 2017, **the total fees imposed amounted to over PLN 914 thousand.**

Apart from examining cases pertaining to the Polish market, UOKiK also issues opinions on proceedings conducted by the European Commission and concerning the impact of concentrations on the Polish market.

UOKiK activities in numbers – 2017

New concentration control proceedings	228
Issued decisions	
concentration approval	205
conditional approval	1
fine for failure to report concentration	3
fine for failure to provide information	1
PLN 914,6 thousand	
Other data	
discontinuance of proceedings	2
return of the notification of the intended concentration to the applicant	13
proceedings moved to the 2nd stage	11
average time of proceedings conducted in the 1st stage	33 days*
average proceedings period (2nd stage)	196 days**
cases are given an opinion in terms of the impact of concentration on the Polish market in connection with proceedings before the EC	346
new explanatory proceedings***	7

Concentration approvals in the years 2015-2017

	2015	2016	2017
concentration approvals	218	194	205
conditional approvals	1	2	1

* The actual case settlement period, taking into account the dates subject to exclusion under Art. 96 sec. 2 of the ACCP.
 ** The actual case settlement period, taking into account the dates subject

to exclusion under Art. 96a sec. 8 of the ACCP.
 *** It pertains to the level of concentration in the economy and determination of the obligation to report concentration.

Overview of activities

EXAMPLES

of 1st step proceedings

Concentration on the mining market

In 2017, UOKiK gave its consent to the takeover by Polska Grupa Górnicza (the Polish Mining Group) of 4 mines²¹ owned by Katowicki Holding Węglowy (the Katowice Coal Mining Holding) as well as Śląskie Centrum Usług Wspólnych (the Silesian Centre for Joint Services). During the proceedings conducted by UOKiK, it was found that no restriction of competition will result from the contemplated transaction. PGG engages primarily in the excavation and sale of bituminous coal (including both power coal and coke). The aim of the concentration is, inter alia, to acquire additional manufacturing facilities for the purposes of expanding PGG's activities in the mining sector. Due to the absence of significant trade barriers within the territory of the European Union as well as the high export and import volume, the bituminous coal trading markets operate at least on a European – if not greater – scale. The aggregate share of PGG and the coal mining facilities acquired by the company is not substantial enough to pose a threat to competition.

Concentration in the banking sector

UOKiK gave its consent to Powszechny Zakład Ubezpieczeń (PZU) taking control over Bank Polska Kasa Opieki (Pekao S.A.), Pioneer Pekao Investment Management, and Xelion Investment House.²² PZU mainly deals with the sale of property and personal insurance. In addition, it also leads a capital group consisting of a few dozen entities, including Alior Bank. The proceedings proved that the total share of the entrepreneurs involved in the concentration scheme in the sectors related to broadly understood banking services would not exceed 20%, which means that Alior Bank and Pekao will still have to compete against other banks. The Office also examined

the possible risk that PZU may restrict access to its products to banks offering bankassurance (i.e. the sale of insurance services by banks). However, the analysis performed by UOKiK ultimately proved that no such danger exists. This is because insurance services are usually offered as an addition to banking services. When selecting the bank, the customers mostly focus on the main products (loans, deposits, etc.) and not on the accompanying insurance policies.

Concentration – retail space

UOKiK gave its consent to acquisition of the following shopping malls by Echo Polska Properties (EPP): Galeria Twierdza in Kłodzko and Zamosć, and Galeria Wzorcownia in Włocławek.²³ At the beginning, the application also involved the acquisition of "Tęcza" Shopping Mall in Kalisz, whereas EPP already had one shopping mall at its disposal in this city. According to the undertaking, the acquisition of another entity would not give rise to the limitation of the competition. UOKiK found, however, that the case requires a market research. The Office prolonged the proceedings in order to verify the data included in the application in terms of the definitions of relevant markets and assessment of the impact of concentration. In the meantime, EPP withdrawn its application and submitted another one, this time without the acquisition of the shopping mall in Kalisz.

EXAMPLES

of 2nd step proceedings

Takeover on the book market

UOKiK gave its consent to acquisition of Platon by Empik.²⁴ Empik deals with the sale of goods such as books, newspapers and magazines, music, films, multimedia, electronic equipment and tickets for cultural events. Platon, on the other hand, is a book wholesaler and distributor. Both undertakings pursue their business on

a nationwide scale. The significant information on the shares of the undertakings involved in the concentration scheme and their competitors were based solely on the estimates made by the applicant. As a result, UOKiK carried out a market research to obtain credible data necessary to assess the concentration. The analysis showed that the shares of Empik and Platon on the markets on which the transaction would have an impact were not considered to be large enough to pose a threat to their competitors. After the concentration scheme is completed, Empik will still have to compete against other undertakings. For the above reasons, the Office approved the concentration.

Concentration on the electricity market

UOKiK gave a conditional approval to the takeover of EDF Polska by PGE.²⁵ The transaction participants deal with the production, sale, and distribution of electricity. EDF Polska produces the majority of energy in the Rybnik Power Plant. Market testing has proved necessary to reach the relevant conclusions. The market testing process applied to all major electric power sector players. UOKiK has also requested the Energy Regulatory Office and the Polish Energy Exchange (Towarowa Giełda Energii S.A.) to present their opinion on the matter. A detailed analysis showed that the transaction could affect the competition. In view of these facts, UOKiK raised objections to the entrepreneur. The Office stated that PGE may gain a dominant position on the electricity generation and distribution market. This in turn may give rise to a decline in the turnover of the Polish Energy Exchange (Towarowa Giełda Energii) and have an adverse impact on the sale market. In response, the company offered a solution that lead to a conditional approval. In line with the condition imposed on PGE, in the years 2018-2021 the company will have to sell on the ex-

1.4 Control of concentrations

change the entire energy produced by the Rybnik Power Plant. This quantity may decrease only in the event of increase of the statutory obligation of energy disposal by the entire PGE Group. The realisation of the entrepreneur's offer will smooth out any negative consequences of the transaction on the competition.

Fine for failure to report concentration

Control of concentration is intended to prevent the formation of undertakings which could have an adverse impact on competition on the given market. The provisions of applicable laws stipulate severe financial penalties for failure to submit a notification of such transaction. Such cases, however, are extremely rare.

In 2017, UOKiK imposed a fine on Bać-Pol as its subsidiary carried out a concentration without the necessary consent of the Office.²⁴ In 2012, the company known as Sezam-Śrem took over the control of a part of the property of another company called Klementynka, with registered office in Wrocław. Both undertakings were grocery wholesalers. Since in 2015 Sezam-Śrem became a part of Bać-Pol, it was the latter company against which the proceedings were initiated. It used to be a subsidiary. Despite the absence of a written takeover contract, UOKiK was able to determine that Sezam-Śrem acquired key assets from Klementynka as well as all the relevant business secrets. In the end, UOKiK imposed a financial penalty of PLN 527 thousand on Bać-Pol for failure to report the intended concentration. An additional factor which was taken into account in the process of determining the penalty amount was the fact that the undertaking consciously violated the provisions of the Act on Competition and Consumer Protection. The only attenuating circumstance was that it has only done so for the first time.

1.5 Court judgements

1.6 State aid

Examples of UOKiK's decisions in concentration control cases in 2017

In 2017, as in the previous year, decisions in concentration cases most often concerned the real estate market (including property development).

Industry	Number of cases	Examples of decisions		
real estate (including property development market, property rental)	24	DKK-107/2017 consent to take control of mLocum S.A. in Łódź by Archicom S.A. in Wrocław	DKK-183/2017 consent to establish a joint venture: PDC Industrial Center 81 Sp. z o. o., seated in Warsaw, by PG Dutch Holding I B.V., the Netherlands, and Marvipol Logistics S.A. in Warsaw	DKK-203/2017 consent to establish a joint venture: PDC Industrial Center 79 Sp. z o. o., seated in Warsaw, by PG Dutch Holding I B.V., the Netherlands, and Kajima Properties (Europe) Limited, the UK
food sector	19	DKK-34/2017 consent to establish a joint venture: Polven Sp. z o.o., seated in Warsaw, by Cornum Capital SICAV-FIS in Luxembourg and Blue Sea Investments S.à.r.l. in Luxembourg	DKK-63/2017 consent to take control of PINI Polska Sp. z o.o. in Kutno, Royal Chicken Sp. z o.o. in Kutno, and Hamburger Pini Sp. z o.o. in Kutno by Smithfield Foods, Inc., USA	DKK-133/2017 consent to take control of Moorgut Kartzfehn von Kameke GmbH & Co. KG (Germany) and Kartzfehn von Kameke Beteiligungsgesellschaft mbH (Germany) by EW Group GmbH (Germany)
investment funds	11	DKK-17/2017 consent to take control of Penton Towarzystwo Funduszy Inwestycyjnych S.A. seated in Warsaw by Jan Motz residing in Wólka Dworska	DKK-61/2017 consent to establish a joint venture: Future Tech Closed-End Investment Fund, seated in Warsaw, by mBank S.A. seated in Warsaw, Jarostaw Jerzy M. residing in Warsaw, and Wojciech C. residing in Warsaw	DKK-168/2017 consent to take control of KBC Towarzystwo Funduszy Inwestycyjnych S.A. in Warsaw by PKO BP Finat Sp. z o.o. in Warsaw

21. Decision DKK-49/2017.
22. Decision DKK-56/2017.
23. Decision DKK-74/2017.

24. Decision DKK-129/2017.
25. Decision DKK-156/2017.
26. Decision DKK-86/2017.

1.5 Court judgements

Court judgements in cases regarding practices restricting competition and concentration control

Traders may file appeals against UOKiK's decisions and complaints against the Office's resolutions to the Court of Competition and Consumer Protection (SOKiK) in Warsaw. The Court's judgements may be appealed against to the Court of Appeal in Warsaw (SA in Warsaw). At the next stage, it is possible to file a cassation complaint with the Supreme Court (SN).

Overview of judgements

SOKiK – the judgement of 7 February 2017 on the appeal of Sport & Freizeit²⁷

In 2013, UOKiK held that **the agreement on resale prices of skiing equipment and accessories concluded** by Sport & Freizeit and Intersport Polska constituted a competition-restricting practice. Whereas Intersport Polska took advantage of the leniency programme and managed to avoid the imposition of a financial penalty, Sport & Freizeit had to pay a fine of over PLN 122 thousand and appealed with the Court of Competition and Consumer Protection (SOKiK). The court shared the UOKiK's stance and sustained the amount of financial penalty.

SOKiK – the judgement of 21 March 2017 on PGNiG²⁸

PGNiG has failed to comply with the decision of UOKiK, and specifically to

Judicial decisions in competition protection cases (2015-2017)*

* Information on all appeals against UOKiK's decisions are available from the decision database at: http://www.uokik.gov.pl/decyzje_prezesa_uokik3.php.



amend the contracts with its customers so that they no longer contain any restrictions concerning the reduction in the volume of gas ordered, which the company was obliged to do. The company undertook to exclude the impugned provisions from the contracts; however, it also proposed replacement

provisions having a similar effect to the previous ones. As a result, a financial penalty of over PLN 10 million was imposed on PGNiG in 2015. The undertaking appealed against the decision, SOKiK sustained the decision of the Office in full. The Court emphasised that the penalty was charged appropri-

ately and considered each day of delay in performance of the decision.

Court of Appeal – the judgement of 5 January 2017 on paints²⁹

The case referred to UOKiK's decision of 2010 concerning a collusion between Akzo Nobel Decorative Paints with Leroy Merlin, Castorama, Praktiker, and OBI. The Office found that the **companies engaged in collusion which involved the fixing of resale prices for paints and coatings** manufactured by Akzo Nobel. Both SOKiK and the Court of Appeal held that the activities of the entrepreneurs in question amounted to a competition-restricting agreement, but they have reduced the fines imposed by the Office substantially, from nearly PLN 52 million to PLN 4.2 million. The Court of Appeal held that, in determining the amounts of the penalties imposed, UOKiK has failed to take sufficient account of the fact that Akzo Nobel was a relatively minor supplier whose importance for its distributors was limited at best, which meant that the impugned practice could not have a significant impact on the market in question. Moreover, the Court of Appeal overruled the decision insofar as it pertained to the participation in the arrangement with Leroy Merlin and held that at the time of initiation of the anti-trust proceedings, the claims pertaining to the practices which the company engaged in had become time-barred.

Court of Appeal – the judgement of 25 October 2017 the appeal of Zebra Max³⁰

In 2017, UOKiK held that companies from Bytom – Zebra Max and Zebra 2 – **were involved in a tender collusion**. When participating in public tenders for the construction or maintenance of road

infrastructure, these family-related undertakings would repeatedly agree between themselves the conditions of the bids placed, ultimately resulting in the contract being awarded to the company which offered a higher price. The Office imposed a fine of over PLN 129 thousand on Zebra Max and Zebra 2. In the years 2013-2015, the case was reviewed twice by SOKiK that ultimately sustained the UOKiK decision. In 2017, the Court of Appeal overruled the appeals made by both traders while sustaining both the statement of reasons and the amount of penalty.

Court of Appeal – the judgement of 4 October 2017 on the appeal of Inco Group³¹

The appeal was made against the decision of UOKiK of 2011 concerning the conclusion by Inco Group of agreements with the distributors of household chemicals and garden fertilisers. **Both cases involved the fixing of minimum wholesale prices** for those products. The garden fertilisers collusion also involved a market allocation scheme under which individual distributors were not allowed to sell fertilisers to nationwide retail networks without a written consent of the Inco Group. For the use of these practices, the Office imposed on the company a fine of over PLN 2 million. The Group appealed against the decision, but it was sustained by both SOKiK and the Court of Appeal. The Supreme Court shared the view of the Office and overruled the cassation appeal.

27. File reference number XVII Ama 115/14.

28. File reference number XVII Ama 4/16.

29. File reference number VI ACa 1057/15.

30. File reference number VII ACa 872/17.

31. File reference number III SK 47/16.

1.6 State aid

The EU law only permits state aid by way of exception, so as not to distort free competition within the EU market. State aid projects or changes to the terms and conditions of use of such aid must be reported to the European Commission (EC). An exception is aid granted under so called block exemptions³² and de minimis aid.³³ State aid is not only a transfer of funds, but also of any other form of state resources.

The EC decides whether state aid granted to businesses in the EU is compatible with the internal market. In contrast, UOKiK's main task is to perform the initial assessment of cases of individual aid and aid programmes in this regard.³⁴ Although the Office's position is not binding, it is very often taken into account in decisions of the European Commission. In the process of notification of state aid, UOKiK notifies the EC of an intention to grant aid.

32. The European Commission may issue regulations under which certain aid categories are a priori considered as compatible with the common market, and as such do not require prior notification to or a consent from the Commission. More information available at http://www.uokik.gov.pl/wylaczenia_grupowe_i_pomoc_de_minimis2.php.

33. The notification

requirement does not apply to aid which does not exceed EUR 200 thousand gross during three calendar years (or EUR 100 thousand for the sector of road transport of goods).

34. UOKiK is not competent to decide on state aid in agriculture and fishing industry (in line with the Act of 30 April 2004 on Proceedings in Public Aid Cases, i.e. Journal of Laws of 2018, item 362).

The Office also monitors state aid in Poland on the basis of reports submitted by aiding institutions. Reports are submitted via SHRIMP data storage system. In 2017, the first stage of system modernisation has been completed and a detailed description of the subject of procurement was prepared in the tender documentation. The project is financed from the Cohesion Fund TA OP 2014-2020 as part of arrangement with the Minister of Development and Finance.

Overview of activities

Information on state aid

State aid reports

UOKiK prepares reports and analyses on state aid, including:

- an annual report on aid granted to entrepreneurs
- an annual report on de minimis aid
- a periodical report on automotive companies as part of special economic zone

Electronic State Aid Information System (SUDOP)

The system contains basic information on granted aid. The application is based on the data provided by aid grantors in the form of reports submitted to UOKiK via SHRIMP.

SHRIMP: System for Aid Schedule, Registration, and Monitoring

It allows to provide uniform reports on granted state aid and information on failure to provide such aid

See

SUDOP Database
Reports and analyses

UOKiK activities in numbers – 2017

Opinions on state aid and government projects	Number
Number of applications for interpretation received and analysed	451
Number of draft government documents analysed for recognition of support as state aid	704
Notification of de minimis programmes	1033
Notification proceedings before the EC	Number
projects notified to the EC via the Office, of which:	15
– individual aid projects (including restructuring)	6
– aid scheme projects	9
projects accepted by the EC	11
withdrawn projects	4
projects analysed by the EC under preliminary investigation	41
projects for which formal investigation was carried out*	2
projects submitted to the EC via UOKiK under block exemptions, including:	49
– aid scheme projects	8
– individual aid projects	41

* The statistics also include applications submitted in the previous years, which the European Commission assessed in 2016.

Regaining state aid implemented for Autostrada Wielkopolska S.A.

In 2017, the EC made a decision ordering Autostrada Wielkopolska S.A. to return the compensation that has been wrongly paid to the company in question. Consequently, the state of Poland should obtain from the company a total of PLN 894 million, increased by due interest. The decision was made as a result of proceedings instigated at request of Polish authorities. Within the course of the proceedings, the Polish authorities

took a stance that the aid in question does not comply with the internal market. The EC's decision sustained that stance.

UOKiK closely cooperated with the Ministry of Infrastructure, the General Prosecutor's Office of the Republic of Poland, and the General Directorate for National Roads and Motorways in connection with the case in order to recover the compensation and arranged the manner and schedule of its recovery.

**Poland should obtain
from the company Auto-
strada Wielkopolska S.A.
a total of**



**PLN mn, increased by
due interest**

Research and development

In 2017, UOKiK actively cooperated with the Ministry of Science and Higher Education and the Ministry of Development, along with their subordinate units: the National Centre for Research and Development, the Information Processing Institute – the National Research Institute. The purpose of the cooperation was to come up with **solutions for the most frequent problems associated with R&D state aid, and in particular aid granted** as part of projects co-financed by the European Union. As part of its activities, UOKiK took part in a number of R&D state aid trainings for the representatives of the institutions of higher education, scientific centres, and regions that were organised by the Ministry of Development.

UOKiK was actively involved in the legislation procedure for new legal solutions in R&D relief. In this regard, the Office closely cooperated with the Ministry of Development and the Ministry of Finance, made comments

and suggested solutions that ensured compliance with state aid regulations. One of the major changes provided for in the new regulations involves the introduction of an additional catalogue of eligible costs and the possibility of higher tax deduction for entrepreneurs enjoying the status of a research and development centre. An R&D relief in this regard constitutes state aid which can only be granted in line with the General Block Exemption Regulation, i.e. without the need to notify the Commission.

Polish power market

2017 was marked initially by **pre-notification, and subsequently notification** of a strategic (from the viewpoint of the Polish power sector) the Power Market Act. Power market is a mechanism that assumes awarding electricity producers for their readiness to supply power for the National Power System (KSE). The purpose of the mechanism is to create an incentive to maintain generating units in the system that are scheduled to

be withdrawn for economic reasons. The Act is also supposed to ensure the establishment of new sources in this respect in order to ensure that the power level corresponds to anticipated demand. The pre-notification procedure consisted in a substantial exchange of information with the European Commission. Within the course of the procedure, the state of Poland arranged with the Commission and introduced a number of changes in the draft. Ultimately, they **allowed to obtain a decision approving the programme** that was made by the Commission in February 2018, along with 5 other decisions referring to the power market support programmes in Belgium, France, Germany, Greece, and Italy.

EXAMPLES

of projects evaluated or notified in 2017

Draft regional aid programme for SMEs dealing with the shipbuilding sector

Draft "Support programme for implementation of intermodal transport projects within the framework of the Infrastructure and Environment Operational Programme 2014-2020"

Draft Regulation of the Minister of Culture and National Heritage on granting aid to culture and the protection of cultural heritage as part of the Infrastructure and Environment Operational Programme for the years 2014-2020

Draft Regulation of the Minister of Development and Finance amending the Regulation on providing investment support for sport and multi-function recreational infrastructures as part of regional operational programmes for the years 2014-2020

2.1
Calendar of events

2.2
Consumers' collective
interests and standard
contractual clauses

2.3
Supervision over
The Trade Inspection
Authority

2.4
Product safety and
market surveillance

2.5
Laboratories



2.6

Fuel quality control system

2.7

Out-of-court consumer dispute resolution

2.8

Court judgements

2.9

Cooperation with consumer organisations and consumer ombudsmen

CONSUMER PROTECTION

The tasks of the Office revolves around the protection of interests of consumers as a collective entity as well as to remove any irregularities and violations of the applicable provisions. Such tasks are horizontal in nature, which is why interventions and inspections are conducted across various market sectors. As part of the consumer protection network, the Office cooperates with sector regulators, judicial authorities, enforcement agencies, non-governmental organisations, and consumer ombudsmen. UOKiK monitors the out-of-court dispute resolution system involving entrepreneurs and provides counselling for consumers.

2.1 Calendar of events

2.2 Consumers' collective interests and standard contractual clauses

2.3 Supervision over The Trade Inspection Authority

2.4 Product safety and market surveillance

2.5 Laboratories



JANUARY

10.01

Amicable dispute resolution – new regulations enter into force

The Office developed the Act on Out-of-Court Consumer Dispute Resolution³⁵ that implements the EU law in this respect. As part of the new system, the Trade Inspection Authority, which reports to the President of UOKiK, is one of the entities now empowered to review cases from the industries which are not governed by specialised institutions.

11.01

Reasoned opinion in a case of durable medium

UOKiK shared consumer's view in a dispute with Creamfinance Poland as to the manner of release and storage of information significant for the lending company. In the opinion of the Office, neither the website nor user account provided by the lender met the criteria of a durable medium.

FEBRUARY

6.02

Initiation of a series of clause proceedings against banks regarding an unclear specification of currency exchange rates

UOKiK charged BZ WBK with the possible use of abusive clauses in standard agreements and in annexes to mortgage loan and credit contracts denominated in foreign currencies. The case brought about a series of proceedings in this regard which concerned in total 9 banks.

16.02

Initiation of UOKiK laboratory assessment as part of accreditation procedure

The assessment was carried out by the Polish Centre for Accreditation (PCA). In the months to follow, all laboratories of the Office were examined. Under the accreditation procedure, it was confirmed that they are competent for research.

MARCH

7.03

Meeting with the inspectors of the Trade Inspection Authority

The purpose of the trainings was to standardise the practice in terms of non-food products.

10.03

Conference on the occasion of World Consumer Rights Day

The conference's main theme was "Consumer Protection in the Age of a Rising Silver Economy". The meeting was organised by UOKiK, the Senate Subcommittee for Consumer Protection, and the Cardinal Stefan Wyszyński University in Warsaw. The conference was held under the Honorary Patronage of the President of the Council of Ministers of the Republic of Poland.

³⁵. The Act of 23 September 2016 on Out-of-Court Consumer Dispute Resolution [Journal of Laws of 2016, item 1823].

³⁶. The Act of 23 March 2017 on Mortgage Loans and Supervision of Mortgage Loan Brokers and Agents [Journal of Laws of 2017, item 819].

2.6
Fuel quality control
system

2.7
Out-of-court consumer
dispute resolution

2.8
Court judgements

2.9
Cooperation with consumer
organisations and consumer
ombudsmen



APRIL

21.03 Initiation of EC audit on official food control

The audit concerned all Polish institutions in charge of controlling food. The EC confirmed that UOKiK and the Trade Inspection Authority ensure compliance with the EU food law.

27.03 Initiation of explanatory proceedings – amusement parks

UOKiK instigated explanatory proceedings with regard to contract templates used by amusement parks, kart circuits, ropes courses, and paintball parks. Market monitoring involved a control of templates used by 27 entrepreneurs. If there were any irregularities, UOKiK would request entrepreneurs to change their provisions.

5.04 Finale of the 8th Wielkopolska Consumer Knowledge Olympiad

The event was held under the patronage of the President of UOKiK and Marshal of the Wielkopolskie Province. The competition promotes knowledge on consumer law among youths and is co-organised by the Branch Office of UOKiK in Poznań. In 2017, 7 consumer protection events were held under the patronage of the President of UOKiK.

21.04 New law in the scope of mortgage loans and consumer loans

The change in legal regulations resulted from the entry into force of the Act on Mortgage Loans and Supervision of Mortgage Loan Brokers and Agents.³⁶ This is the first comprehensive regulation in this area. It increases the transparency of offers and strengthens the position of consumers in relations with financial institutions. The Act also changes legal provisions concerning how a consumer loan can be advertised. UOKiK was actively involved in the legislation procedure.

MAY

10.05 Durable media – the first decision

UOKiK found that the internal e-banking system used by Credit Agricole Bank Polska did not meet the standards of a durable medium (RBG-2/2017). This is the first decision of the Office in this regard. The entrepreneur also made illegal and unilateral changes in contractual provisions. The Bank committed itself to carry out various forms of public compensation and return individually settled fees and commissions which changed during the term of bank contracts during the last several years.

15-19.05 Delegation from Malta

A few days' visit was conducted as part of the EU civil servant exchange programme. The representatives of the market surveillance authority in Malta received information about the Polish surveillance system, including cooperation with customs agencies. Later on, UOKiK also hosted the representatives of the market surveillance authority from Bulgaria (June) and Germany (December).



JUNE

5.06 Decision on contract templates: prohibited – the first decision

Kazimierz Wielki University in Bydgoszcz (UKW) manages a general education school complex. The Office challenged the provisions provided for in template contracts concluded with the students' parents. This practice led to a one-sided specification of the amount of tuition fees by the UKW. The Office accepted the University's commitment to change the practice (RBG-3/2017).

19.06 Initiation of the overview of the management system in UOKiK laboratories

The UOKiK management carried out an overview of the management system in the laboratory in Poznań as part of accreditation system and development plans. Similar overviews were conducted from June to November in other 7 units owned by the Office.



JULY

21.07 Public compensation in the telecommunications industry

UOKiK has concluded proceedings against Neovision (DOI-K-3/2017). The matter concerned, inter alia, the company's failure to respect the consumer's right to withdraw from the contract in case of extension of contracts for TV platform services. The company committed itself to provide a public compensation and return the wrongly charged fees.

26.07 Opening of a new website www.polubowne.uokik.gov.pl

A special website with information on using the out-of-court consumer dispute resolution system has been launched.



AUGUST

11.08 Penalty for misleading telecommu- nications advertisements

UOKiK imposed a fine of over PLN 16 mn on Orange Polska for advertisements "Superpromotion of Neostrada" and "Geopromotion for Neostrada" (RBG-4/2017). The company failed to inform in a due manner about any additional costs as part of its promotional packages.

18.08 Consumer warning – pyramid scheme

UOKiK issued a warning against OneLife Network Limited in the course of proceedings for an illegal, pyramid-like promotional system associated with "OneLife" and "OneAcademy" projects as well as "OneCoin" cryptocurrency.

2.6

Fuel quality control system

2.7

Out-of-court consumer dispute resolution

2.8

Court judgements

2.9

Cooperation with consumer organisations and consumer ombudsmen



SEPTEMBER

14.09

Establishment of cooperation in the Baltic states region

UOKiK took part in a meeting of customs authorities and surveillance institutions of the Baltic states in Riga. The event concerned regular cooperation between the countries located in this region, the purpose of which is to protect the EU market against products which do not meet the applicable standards and, as a result, pose a threat to their users.

18.09

Initiation of the campaign "Make friends with arbitration!"

From September to October, UOKiK conducted an online campaign which encouraged consumers to use the out-of-court entrepreneur dispute resolution system.

28.09

Workshops for entrepreneurs – market control and surveillance

The workshops were intended for entrepreneurs from the clothing, furniture, entertainment, home appliances, and electronics industries and concerned market control and surveillance provisions. The meeting participants also discussed irregularities concerning toys and electronic equipment.

29.09

Fine for mis-selling for a credit intermediary

UOKiK imposed a fine of over PLN 6 mn on Europejska Grupa Finansowa Council S.A. (RWR-5/2017). The company encouraged consumers to enter into consumer loan contracts whose terms and conditions did not correspond to the needs expressed by them and repayment capacity. Within the course of proceedings, UOKiK issued a warning against the harmful practices used by the company.

OCTOBER

12.10

Top fine – misleading advertisements

UOKiK imposed a fine of over PLN 25 mn on Aflofarm for its ads on dietary supplements "RenoPuren Zatoki Hot" and "RenoPuren Zatoki Junior" (DOIK-5/2017). The food products were presented as though they featured healing properties. This is the highest fine imposed in 2017 for practices that violate collective consumer interests.

16.10

Initiation of activities under Joint Action 2016

Joint Action 2016 is a European project concerning market surveillance in terms of safety of electronic toys, hair treatment devices, and percussion drills. UOKiK became a leader of an action concerning the safety of hair treatment devices. The project will end in October 2019.



NOVEMBER

13.11 Training for entrepreneurs – RoHS directive

The event was co-organised by the Polish Centre of Research and Certification. The purpose of the meeting was to discuss the EU law regarding the limitation of certain hazardous substances in electric and electronic equipment ("RoHS"). This is the first one of scheduled trainings which promote rights and obligations in the scope of market surveillance.

28.11 Jubilee of the Silesian Standing Arbitration Court

UOKiK was involved in festivities on the 25-year anniversary of an arbitration court at the Silesian Province Trade Inspector in Katowice. It was one of the first institutions in Poland to deal with out-of-court resolution of disputes between consumers and entrepreneurs.

DECEMBER

11.12 Meeting with the National Council for Consumer Ombudsmen

The purpose of the meeting was to discuss the need for legislation changes in contracts concluded away from the business premises.

12.12 Meeting of the Market Surveillance Steering Committee

As part of coordination of the national market surveillance system, UOKiK organises regular Steering Committee meetings. They are participated by the representatives of institutions involved in market surveillance in Poland.

13.12 National Cooperation Forum in chemicals surveillance

UOKiK took part in a meeting involving authorities which control substances and chemical mixtures. The forum is used as a place for exchange of experience in chemicals. It is participated by the representatives of research institutes, public administration bodies,

and entrepreneurs. The forum is organised by the Ministry of Entrepreneurship and Technology.

18.12 Publication on the UOKiK website of an alert on alternative investments

The publication on the UOKiK website of a message on dangers associated with so-called alternative investments, pyramid schemes, forex, broken down into entities subject to proceedings conducted by the Office.

29.12 Approval of the National Market Surveillance Programme for 2018

The European Committee of the Council of Ministers approved an annual market surveillance programme. The document was prepared by UOKiK in cooperation with surveillance institutions. It presents a synthetic list of priorities and tasks, broken down into specific industries.

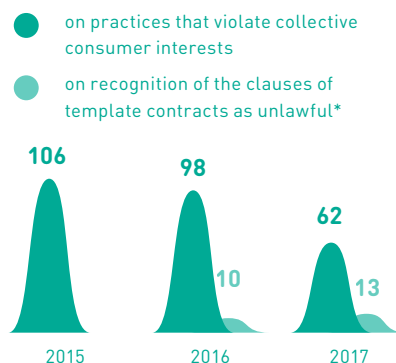
2.2

Consumers' collective interests and standard contractual clauses

Practices that violate collective consumer interests involve activities contrary to legal regulations or best practices that may potentially affect an unlimited number of persons. They may especially take the form of unfair market practices, lack of reliable information, or sale of financial products not adjusted to the means or needs of a consumer (mis-selling). It is also prohibited by law to apply **prohibited standard consumer contract forms** while entering into contracts with consumers. General terms and conditions, regulations, or other types of forms cannot shape the rights and obligations of consumers in a way which violates best practices or grossly violates their interests.

With consumer protection in mind, **UOKiK monitors entrepreneurs' activities and analyses warnings from the market, including consumer complaints**. Such information contributes to the identification and removal of illicit practices. A basic form of Office's intervention involves administrative proceedings which may lead to a financial penalty being imposed on the entrepreneur. Such sanctions do not, however, eliminate the losses suffered by consumers as a result of unfair practices. As a result, UOKiK employs various forms of public compensation. Under certain circumstances, it is possible to accept a commitment from an entrepreneur to change their impugned conduct. Prior to issue of the decision confirming the practice or imposing a fine, the Office presents

Initiated proceedings (in years 2015-2017)



In the years 2015-2017, the number of proceedings concerning practices that violate collective consumer interests decreased. This was affected by entrepreneurs' conduct. Once the President of UOKiK intervenes in the form of a soft call or conducts explanatory proceedings, entrepreneurs often adjust their practices to the requirements resulting from legal regulations or best practices. As a result, it is not necessary to instigate proper proceedings on a given case.

* In 2016, the Office was vested with new powers that allow it to recognise clauses in standard contracts as prohibited.

detailed justification of charges to the trader (SUZ).

The proceedings against a specific trader are usually preceded by explanatory proceedings which aim at an initial identification of violation. UOKiK may also apply less severe forms of interventions through consumer protection calls to entrepreneurs (so-called soft calls).

The Office also **expresses views which are significant in cases brought be-**

New proceedings



** Proceedings concerning a fine to be imposed on a trader for failure to comply, or default in complying, with a decision, for failure to provide the requested information to the Office or for provision of false or misleading information, for failure to cooperate in the course of an inspection.

fore courts and regarding consumer protection. As in the previous period, the opinions expressed in 2017 mainly concerned **mortgage loan contracts denominated in CHF**. A number of reasoned opinions concerned **Unit-Linked Life Insurance Plan (ULIP) contracts**. The dominant nature of these cases results from the fact that in previous years entrepreneurs resorted to prohibited contract terms on a broad scale, which had severe consequences for consumers.

2.1
Calendar of events

2.2
**Consumers' collective
interests and standard
contractual clauses**

2.3
Supervision over
The Trade Inspection
Authority

2.4
Product safety and
market surveillance

2.5
Laboratories

Issued decisions – 2017

66

on practices violating
collective consumer
interests

78.8

PLN mn total fines

26

accepted
liabilities

6

on recognition
of the clauses of
template contracts
as prohibited

5.9

PLN mn total fines

1

accepted liabilities

10

on imposition of a fine

Other activities – 2017

5726 2

warnings from the
market

performed
controls

545

new soft calls to
entrepreneurs

9

detailed justifications
of allegations under
proceedings for
penalty imposition

36

detailed justifications of allegations
under proceedings for violation of
collective consumer interests and
prohibited contractual clauses

297

reasoned opinions
on judicial cases

7

consumer
warning issued

Overview of activities

Information security – a durable medium in the financial sector

The term of “durable medium”³⁷ can be found in numerous provisions which regulate the rights and obligations in agreements to which consumers are parties. The issue has also been discussed as part of proceedings carried out by UOKiK in the financial sector.

In the years 2015-2017, the Office instigated proceedings against 18 banks as it challenged the ways their customers were notified about significant changes in the contracts, e.g. as regards fees and commissions. Moreover, some of the banks only provided information using their in-

ternal e-banking systems which do not meet the criteria of a durable medium. In decisions made against Credit Agricole,³⁸ the Euro Bank,³⁹ the Bank for Environmental Protection (BOŚ),⁴⁰ UOKiK found that **the internal e-banking systems were entirely controlled by the entrepreneurs**. The technology used by them did not guarantee that the content of documents would not be changed unilaterally. Moreover, it does not grant access to information after the end of the contract. The Banks discontinued the impugned practices and have commenced efforts intended to modify their systems so that they meet the criteria of durable media.

Pyramid schemes and alternative investments

In 2017, UOKiK made an announcement of new threats to consumers related primarily to currencies, so-called **alternative investments, pyramid schemes, and forex phenomena**. It also contained information on entrepreneurs who are subjected to proceedings by the Office to verify whether their activities fall within a pyramid scheme⁴¹. Illegal mechanisms⁴² are often hidden under the pretence of various type of investments, e.g. in gold, diamonds, or various currencies. Consumers often learn that they have been deceived only after the system collapses. As a consequence, consumers often lodge complaints with UOKiK in this regard. A short-term nature of schemes as well as their illegal

Highest fines per decisions – 2017 – violation of collective consumer interests

78.8 PLN mn
total fines

DOIK-5/2017:

PLN 25.8 mn

Aflofarm Farmacja Polska Sp. z o.o.

for misleading advertising of dietary supplements

RBG-4/2017:

PLN 16.3 mn

Orange Polska S.A.

for misleading advertising of telecommunications services

DOIK-12/2017:

PLN 20.7 mn

Bank Millennium S.A.

for misleading information in response to consumer complaints

PLN 16 mn

other fines in total

nature makes it more difficult to conduct administrative proceedings successfully. Therefore, it is very important to issue warnings against a potential threat very quickly.

The Office closely cooperated with the Polish Financial Supervision Authority (the PFSA) and prosecutor's office which received offence notifications. Two proceedings were conducted against entrepreneurs offering crypto currencies: DasCoin and OneCoin. The popularity of crypto currencies is used in many risky business models. As for the undertaking that offered "OneCoin" – OneLife Network Limited – **UOKiK issued a warning** due to possible loss of substantial financial means by its consumers.

In October and December 2017, the President of UOKiK issued decisions against: Recyclix Sp. z o.o. and OneLife Network Limited seated in Belize City as it found that the companies in question conduct and promote pyramid-like incentive schemes under which consumers buy packages in return for being allowed to obtain financial benefits. These benefits mainly depend on enrolling new consumers into the system, not on sales volume, which meets the criteria of a pyramid-like incentive scheme and, as a result, constitutes a violation of collective consumer interests. The Office ordered that these practices be discontinued.⁴³ The decisions are final.

37. Durable medium – a material or device allowing consumers or undertakings to store information addressed to them. The key aspect of a durable medium is that it provides access to data which can be reproduced in an unaltered way – without creator's intervention. From consumer's perspective, the purpose of a durable medium is to ensure that the information is stored for a period necessary for the protection of their interests resulting from their relations with the entrepreneur.

38. Decision RBG-2/2017 (final).

39. Decision RBG-5/2017 (final).

40. Decision RBG-7/2017 (final).

41. Companies subject to proceedings in 2017: FutureNet, FutureAdPro in the Marshall Islands, Netleaders, CL Singapore in Singapore, One Life Network from Belize, Mart Diamonds in Warsaw, Proventus Herman i Wspólnicy Financial Group in Katowice, Prevalue Cooperative Owners Wealth Owner Cooperative in Warsaw, Berkeley Foundation in Łódź, Questra Holding Inc. in the British Virgin Isles,

Questra World Global S.L. in Spain, Atlantic Global Asset Management on the Cape Verde Islands, Gold I Global Online Limited seated in London, Goldsaver, Lyonesse.

42. It is prohibited by law for entrepreneurs to establish, carry out or promote pyramid schemes. Such systems are not based on actual investments, but on subsequent enrolments and payments by new members that are not invested, but merely intended for payments to members that had entered the scheme previously. The rest is profit paid to the scheme founders.

43. Decision DOIK-4/2017 against Recyclix Sp. z o.o. with its registered office in Warsaw and decision DOIK-8/2017 against OneLife Network Limited with its registered office in Belize City (Belize).

44. The Act of 11 September 2015 on Insurance and Reinsurance Activities (Journal of Laws of 2015, item 1844, as amended).

45. This is a different between the currency buy rate applied while granting loans and the sell rate which is considered as part of repayment.

Life insurance from the UKF – next chapter

On 2 June, UOKiK instigated explanatory proceedings to verify initially whether insurance companies comply with the Act on Insurance and Reinsurance Activities.⁴⁴ It was verified whether entrepreneurs suggest, conclude and perform life insurance contracts with the UKF in a way corresponding to the Act or whether they resort to infringements or violations. Market practices and template contracts were subject to examination.

Currency spreads

While granting loans denominated in a different currency, banks earn profits on spreads⁴⁵ whose amount and clear calculation rules are very important for borrowers.

Durable medium

– reasoned opinion on the case

In January 2017, the President of UOKiK issued a reasoned opinion on the case of durable medium. The case involved a dispute between a consumer and a lender, Creamfinance Poland, as to the way the wording of consumer loan contract was delivered. The loan contract, individual terms and conditions, and withdrawal specimen were delivered to the customer once he logged in his account using an online website. In the opinion expressed by the Office, UOKiK shared the consumer's view and found that neither the website nor user account provided by the lender met the criteria of a durable medium. In both cases, the wording could have been modified by the lender. It also

did not guarantee that the content of the documents could be accessed after the expiry of the contract, which would be necessary for the parties to the contract to pursue any claims.

Durable media in the CJEU case law

In January 2017, the Court of Justice of the European Union (CJEU) passed a judgement* with material guidelines on durable media. The case reviewed by the court concerned payment services. The CJEU found that electronic documents provided to customers can be deemed to have been delivered via a durable medium only if the website or the system allow to reproduce the information in an unaltered way in an appropriate period of time.

* Judgement of the Court of 25 January 2017 in case C 375/15 BAWAG PSK Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG v Verein für Konsumenteninformation ECLI:EU:C:2017:38.

Having analysed warnings from consumers, **UOKiK verified the spread calculation rules applied by banks**. As a consequence, in 2017, the Office instigated proceedings against 9 banks: BGŻ BNP Paribas, BZ WBK, Bank Millennium, Deutsche Bank, Getin Noble Bank, Raiffeisen Bank Polska, PKO BP, Pekao and BPH. The actions of the Office pertain to the possible use of abusive clauses in standard agreements, terms and conditions of service as well as in annexes to mortgage loan contracts denominated in foreign currencies. The Office questioned the provisions concerning an unclear manner for calculating currency exchange rates. The banks would often refer consumers to Reuters, which is a chargeable website, and currency exchange rate tables prepared by the very banks. While doing so, the banks would not indicate any dates or frequency of their preparation and publication. As a consequence, the borrower was not able to estimate the

exchange rate to be used to calculate the amount of repayment. None of the proceedings was completed in 2017.

Credits and financial counselling

UOKiK deals with unlawful practices in the form of **sale of financial services which do not match customer needs** as well as counteracts any provisions which grossly violate consumer interests. In 2017, the Office imposed substantial fines on credit institutions and financial intermediaries.

UOKiK received complaints regarding Millennium Bank. The case concerned **misleading consumers in responses to their complaints that referred to abusive clauses as regards the manner of calculation of mortgage loan amounts and loan payments on the basis of Swiss franc exchange rate**. The entrepreneur used, among others, the provisions which were entered into the register of abusive clauses several years before.⁴⁶ Customers would often

IMPUGNED PROVISIONS

– EXAMPLES

"adding/subtracting a margin of no more than 5%" (PKO BP)

"average exchange rate of the National Bank of Poland (NBP) minus the purchase margin specified by decision of the bank" (BPH)

"average interbank exchange rates" (Raiffeisen Bank Polska)

"average exchange rates on the foreign exchange market (forex)" (Deutsche Bank)

make this argument in their complaints and the bank would respond that the entry into the register does not apply in this case. An entry of a clause into the register means that the provision is not binding on consumers if the entrepreneur continues to employ that provision in template contracts. Therefore, in the case of Millennium Bank, consumers who challenged the provisions entered into the register may refer to the Judgement of the Appellate Court on this case (ref. no. VI Aca 420/11) and the court is bound by settlement by law. This means that Millennium Bank misled its customers. The bank refrained from this practice within the course of the proceedings. However, **the consequences of the practice were very serious** as it could have discouraged a number of consumers from claiming their rights. As a result, the fine imposed on the entrepreneur amounted to over PLN 20 million.⁴⁷ Moreover, the Bank had to inform its customers about the decision of the Office with immediate effect, i.e. before the decision came into force. In connection with the above, the Bank sent letters on the matter and published an announcement on its website and on Twitter. The company appealed.

In the years 2015-2017, the Office instigated proceedings against



banks as it challenged the ways their customers were notified about significant changes in the contracts

The Office completed proceedings against Europejska Grupa Finansowa Council S.A. (EGFC), conducting operations as Personal Finance in 50 cities in Poland. The company offered financial intermediation mainly to people who needed financial means to pay their current liabilities. Under concluded contracts, the entrepreneur undertook to look for financial offers adjusted to consumer's needs from various financial institutions. **The loans offered by the entrepreneur significantly exceeded the amounts requested by customers.** Financial intermediaries used complex arguments to convince their customers that the excess is allegedly beneficial for them. The company also encouraged consumers with no credit capacity to incur liabilities through third parties. The company guaranteed that after a specific period of time the amount will be transferred to the consumer. However, under the provisions of applicable laws, the assignment of liabilities requires creditor's consent. Moreover, the entrepreneur

New law in the scope of mortgage loans and consumer loans

The Act on Mortgage Loans and Supervision of Mortgage Loan Brokers and Agents* entered into force in July 2017. It is the first Act to regulate, in a comprehensive manner, the process of advertising, offering, concluding and executing mortgage loan agreements. The regulation is expected to improve the transparency of the market's offering and strengthen the position of consumers who are often the weaker part in disputes with the banks. In the years 2016-2017, UOKiK was actively involved in the legislation work on the draft Act. The Office called for, among others, exposure of information on APR, dependency of any and all interest rate changes on the reference rate, and introduction of provisions concerning the register of lending institutions as well as supervision on the entity in question. The solutions were taken into consideration. The Act also introduced changes in consumer loan advertisement regulations. The Office prepared an amendment to provisions in this regard. In the case of advertisements containing data related to the cost of the loan, the set of compulsory information will have to be presented equally visibly, legibly and audibly as other information pertaining to the cost of credit. Other consumer loan advertisements must contain information on APR that needs to be indicated in the same way. In line with UOKiK suggestions, the act also introduces supervision over lending institutions as well as a register of those institutions kept by the PFSA**.

* The Act of 23 March 2017 on Mortgage Loans and Supervision of Mortgage Loan Brokers and Agents (Journal of Laws of 2017, item 819). The Act implements Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

** For detailed information on remarks made by the Office, please refer to the Report for the year 2016.

failed to inform its customers of the actual costs of financial intermediation when concluding the contract. For these actions, UOKiK imposed a financial penalty of over PLN 6 million.⁴⁸ The company appealed.

UOKiK also challenged a number of provisions used by EGFC in specimen contracts. Separate proceedings were conducted on this matter. As a result, the company received a fine of PLN 5.75 million.⁴⁹ One of the issues referred to in the prohibited clauses was intermediary's remuneration – the wording was ambiguous, which **allowed the entrepreneur to maximise their profits** at the cost of customers. Contracts templates also forced consumers to make statements which made it possible to pursue any future claims. These were statements as to the reliability of company's operations or individually negotiated provisions. The company appealed against the decision.

UOKiK also imposed a penalty on Proculus Legal Firm for offering credits which were not adjusted to the needs and means of the customers. The company specialised in lending money to people who had not credit capacity and needed financial means to pay their prior liabilities. By way of decision issued in 2017, the Office found that the Legal Firm manipulated information on purpose, as a result of which the amounts exceeded the actual needs of customers and their repayment capacity. UOKiK also accused the company of excessive commissions that totalled around 20% of the credit and were charged even where all of the activities were performed by a bank or

⁴⁶. Clauses were included in the register with entry numbers 3178 and 3179.

⁴⁷. Decision DOIK-12/2017.

⁴⁸. Decision RWR-5/2017.

⁴⁹. Decision RWR-10/2017.



no agreement was concluded. Blank promissory notes issued by the company did not contain the required “non-endorsable” clause. As a consequence, the lending company could write any amount on the note and transfer the claim to another person. The penalty imposed by the Office totalled PLN 5.8 million.⁵⁰ The decision is final.

Moreover, the Office verifies whether lending companies fulfil their notification obligations. The law lays down detailed requirements for consumer loan advertising while specifying key information that should be presented in a clear and understandable way. However, entrepreneurs do not always adjust their advertising material to their carrier. **The Office questioned advertisements** made by Getin Noble Bank in 2015 that concerned consolidation credit “instalment lower by 5%”. The reservations were based on flyers, TV commercials, and online advertising. The font size of the information required by law was not large enough, and the text screening time in TV spots was too short. The Bank committed itself to provide public compensation for its customers who used the 5% consolidation credit offer

in the TV campaign period and within 14 days from its end. The compensation consists in decreasing the interest rate by 0.5% or returning the interest charged for the last 6 months of loan repayment. In its decision, UOKiK also challenged the representative example applied in advertisements.⁵¹ Getin Noble Bank compared two representative examples of a credit (with and without insurance), which made it more difficult for the customers to compare the terms and conditions of the credit with offers presented by other banks. For this infringement, the Office impose a fine of over PLN 1.7 million on Getin Noble Bank. The trader appealed against the decision.⁵²

UOKiK also challenged the advertisements of 2 lending companies: Net Credit and Incredit which assured that new customers would receive their first loan of up to PLN 2 thousand “for free”. In reality, the condition for free-of-charge loan was repayment on time – in the event of default the customer had to pay a commission, and sometimes interest. Any delays in loan repayment would therefore entail a cost that was higher than the

Involvement in inter-ministerial Financial Innovation Growth Working Group (FinTech)

The purpose of the group established by the Polish Financial Supervision Authority was to identify and remove legislation obstacles which prevented the growth of this sector as well as to create a regulatory sandbox for entrepreneurs operating on this market. The goal was to create a separate, safe environment for experiments without legal consequences. The work of the group were conducted at 6 levels System, Payment, Blockchain and AML, Capital, Insurance, Consumer and Data Processing, Crowdfunding, and Social Loans. UOKiK prepared 14 positions with regard to the issues at hand. The work of the group came to an end in November 2017 with presentation of a final report.*

* Report published on the PFSA website.

advertising suggested. This way, consumers were misled. Moreover, both companies also promised in their advertising that the money would be available on the customer’s account within 15 minutes, and in reality this only applied to those individuals whose accounts were maintained by

50. Decision RWR-11/2017.

51. Banks are obliged by law to present the lending terms and conditions under which it is expected to conclude at least 2/3 of the contracts for a given product. This is supposed to make it easier for customers to compare the offers of different banks with regard to similar loans.

52. Decision RKR-4/2017.

53. Decision RKR-11/2017.

54. Decision RKR-13/2017.

55. Decision RPZ-4/2017.

56. In connection with the proceedings, UOKiK requested for the submission of consumer complaints on this matter.

57. Decision RŁO-9/2017.

58. Decision RBG-4/2017.

59. In light of the Act on Consumer Rights of 30 May 2014, the extension of a contract is treated as the conclusion of a new contract.

one of the 7 selected banks. Moreover, Incredit counted 15 minutes from the time of a positive application review, not from the moment of application submission. The advertising materials for both companies included understated amount as to the effective annual percentage rate; the calculation of interest by Incredit was incorrect. UOKiK imposed penalties on both companies: over PLN 1.3 million on Net Credit⁵³ and PLN 351 thousand on Incredit.⁵⁴ The latter was also placed under the obligation to reimburse its customers for the excessive interest charged. Both companies appealed against the decision.

Telecommunications frauds

The Office has observed frequent, gross activities detrimental to consumers on the telecommunication services market. One of them involves **impersonating the current service provider**.

In 2017, the Office conducted proceedings against Telekomunikacja Cyfrowa in connection with warnings from consumers, mainly the elderly and their families. The representatives of the company would call consumers and pretend to be their current operator and offered conditions of their services that would allegedly be more favourable to them. They suggested that the documents presented to consumers for signature involve a favourable change in the applicable contract. However, the execution of the documents would lead to changing the supplier, with the promotional rates applying for only two months (of which the customers were not notified). UOKiK imposed a fine of PLN 0.5 million on the entrepreneur for unlawful practices and ordered that

the practices be discontinued. The company appealed against the decision.⁵⁵ Due to the harmful nature of operations, UOKiK issued a warning already within the course of proceedings against the practices used by Telekomunikacja Cyfrowa.

A consumer warning was also issued against Nasza S.A. The Office received several hundred complaints from deceived customers, mainly

company no longer uses them. For example, the entrepreneur awarded himself a unilateral right to introduce "all the necessary changes and adjustments in the contractual documentation". By the same token, he was able to shape the terms and conditions of the contract against consumer's will. The Office imposed a total fine of PLN 175.8 thousand for these clauses.⁵⁷ The municipality appealed against the decision.

In 2017, UOKiK imposed
a fine of over

14

PLN mn on Orange Polska
for unfair advertisements
"Superpromocja Neostrady"
and "Geopromocja
dla Neostrady"

through consumer ombudsmen.⁵⁶ The scheme was similar: impersonating a specific operator and presenting an offer that would be allegedly more beneficial. What is more, the logo of the current service provider was presented in contracts. In 2017, the Office initiated proceedings in the present case. At the same time, it conducted separate proceedings against Nasza S.A., this time concerning contract templates. UOKiK held certain clauses to be illegal and ordered that the

Telecommunications advertising

UOKiK also verifies whether marketing content presented by telecommunications operators is reliable. In 2017, UOKiK imposed a fine of over PLN 16 million on Orange Polska for unfair advertisements "Superpromocja Neostrady" and "Geopromocja dla Neostrady".⁵⁸ The company used TV commercials and billboard advertisements to provide unclear information about additional costs for consumers not having a landline phone. The Office challenged the font size, length, and air time of the displayed message. Moreover, in radio advertisements the entrepreneur entirely passed over the issue of additional costs and only exposed the promotional price of the subscription fee. This way, the consumers were misled as to the actual service price. The company appealed against the decision.

Failure to respect the consumer's right to withdraw from the contract

Under applicable laws, the extension of a contract ("contract renewal") is treated as the conclusion of a new contract.⁵⁹ In this case, the consumer has the right to withdraw from a contract within the period of 14 days at no extra cost. These requirements were not respected by ITI Neovision while

concluding distance contracts for nc+ TV platform. The company activated the service without an explicit consent of consumers and provided incorrect information on contract cancellation. It regarded the TV service as an uncancellable service for providing digital content. However, the key issue of the contracts did not lie with providing a specific content (e.g. a movie), but rather ensuring the continuity of watching TV channels under specific packages. By way of decision⁶⁰ UOKiK accepted a commitment from ITI Neo-vision to remove the consequences of its action. Former subscribers who bore unnecessary costs due to withdrawal were offered reimbursement for their costs. As for persons who still wanted to prolong their contract to avoid financial consequence, they were offered free-of-charge services. The decision also specifies public compensation for consumers who received confirmation of the amendment to or conclusion of the contract too late, regardless of whether they made a complaint on this matter.

Premium services

UOKiK undertook activities in connection with information on irregularities in premium services. The Office reacted to the creation of a fake Media Expert profile in social media. As a result of UOKiK activities in 2017, service providers verified responses to complaints, reimbursed consumers for their costs, and introduced changes in internal procedures.

The cases concerning recording phone calls by telecommunications operators

UOKiK checked whether **telecommunications operators provide consumers with recordings of sales phone calls aimed at conclusion of a con-**

Examples of challenged activities

entrepreneur	course of action	fine/public compensation
Biomed Centrum Kruszk, Kruszk	"notifications" about free treatments as part of nationwide "We give health" and "Health for you" campaigns – assuring that it is not about selling products » in reality: sale of irradiating lamps	PLN 39,222
Carpe Diem Med	offering a free-of-charge, home rehabilitation of "spine, joints, rheumatic pains" – assuring that it is not about selling products » in reality, the treatment consisted of connection to an electrostimulator, which then could be bought in a package with a mattress cover	PLN 27,964
Housefire	invitations to participation in free-of-charge healthy lifestyle talks combined with the presentation of state-of-the-art massagers and possibility of purchasing them » blank promissory notes with "on request..." clause were used in the case of instalment sale, which is contrary to the Consumer Loan Act » impeding the return of goods – charging the costs of alleged damage to the product or its packaging without the possibility of verification of those circumstances by the customers	PLN 360,012 - return of incorrect promissory notes to customers - return of amounts due to damaged goods or packaging

tract. Part of them did that even prior to UOKiK's request (ITI Neovision, Multimedia Polska, Multimedia Polska-Południe, UPC Polska). As a result of activities undertaken by the Office, Multimedia Polska, Multimedia Polska-Południe, and UPC Polska changed the manner in which recordings are provided to consumers, which is now more consumer-friendly. The remaining undertakings provided only the recordings of the calls during which the terms and conditions of the agreement were amended, but they have changed their practice as a result of intervention of the Office (Netia, Orange Polska, P4, T-Mobile Polska, Vectra). Ac-

tivities with regard to Cyfrowy Polsat S.A. and Polkomtel Sp. z o.o. were continued in 2018.

Exhibition sale

Consumer interests are often violated at various exhibitions. Sometimes consumers are misled to buy an unnecessary and too expensive product, and then they face problems while trying to return those goods or services or making a complaint. It is very often the case that the victims of these practices are senior citizens who are lured with a free-of-charge medical examination, gifts, etc. In 2017, UOKiK issued a number of decisions in this

regard.⁶¹ The entrepreneurs would invite consumers to a free-of-charge treatment, rehabilitation, whereas in reality various type of equipment, dietary supplements, and cosmetics were sold. Apart from disguising the commercial purpose of the meeting, the infringements also concerned execution of unlawful promissory notes, limitation of warranty rights, and discouragement from returning the goods. Six entrepreneurs received a total fine of nearly PLN 0.5 million.

Dietary supplements

Dietary supplements do not cure diseases. Suggesting otherwise in marketing advertisements is a violation of legal provisions. UOKiK had reservations as to the reliability of entrepreneurs in this respect. In connection with the above, in 2015, the Office called for verification of the content and form of advertisements, including food products. It also pointed to the need to create a code of best practices for the industry. However, the offered solution did not meet the expectations of the Office. First and foremost, the code refers to practices which may be eliminated on the basis of applicable provisions. The Office also made critical remarks about expected sanctions and rules for operation of a disciplinary court.

In addition to an appeal for self-regulation of the industry, UOKiK also commenced administrative activities. In the years 2016-2017, **in connection with unclear advertisements, a total of 5 proceedings were instigated against dietary supplement manufacturers.**

In 2017, 3 initial decisions were issued. One of them concerned Olimp Laboratories. The reservations of the Office concerned appealing to the authority

of pharmacists and their alleged recommendations. The company avoided the fine as it committed itself to remove the consequences of the unfair advertisement. It introduced at its own cost radio announcements suggesting that it could have mislead its customers through its advertisements of magnesium product "Chela Mag B6".⁶² The Office also challenged the advertisements of "Pneumolan" and "Pneumolan Plus". Their manufacturer – Walmark – committed itself to no longer use any phrases in their advertisements that could be misleading to their customers or suggest that their products featured any healing properties. The company also undertook to print at its own cost posters and guides on the properties of dietary supplements.⁶³ UOKiK also issued a decision on an advertisement of "RenoPuren Zatoki Hot" and "RenoPuren Zatoki Junior" dietary supplements. The proceedings involved **a social survey** which confirmed that a substantial part of consumers considered the products to contain healing properties. This happened as a result of the plot and phrases used in the advertisement. The Office imposed a fine of PLN 25.8 million on Aflofarm (the manufacturer).⁶⁴ The trader appealed against the decision.

60. Decision DOIK-3/2017

61. Companies and decisions: Aqua Med RPZ-11/2017 (appealed) and Carpe Diem Med from Opalenica RPZ-6/2917 (appealed), Iscomed from Wrocław RPZ-9/2017 (appealed), Housefire (former name: Hausfeuer) from Poznań RLU-7/2017 and Biomed Centrum Kruszk, Kruszk from Smolnica RKT-11/2017 (appealed), Exit from Opalenica RPZ-7/2017 (no appeal).

62. Decision RBG-1/2017.

63. Decision DDK-1/2017.

64. Decision DOIK-5/2017.

65. They relate to over 20 groups of products, e.g. electric equipment (including electronic equipment and household appliances), toys, personal protection equipment, construction materials, machines and elevators.

2.3 Supervision over the Trade Inspection Authority

One of the institutions protecting consumer interests is the Trade Inspection Authority (IH). Its tasks are performed by UOKiK and Provincial Trade Inspection Offices. As part of surveillance over the IH, **the Office prepares annual all-Poland control plans and monitors their implementation by the Provincial Trade Inspection Offices.** Controlling priorities are defined on the basis of irregularities identified in the previous years, their significance and popularity of a given product category. Information obtained from the market, including consumer complaints, is equally important. Inspection tasks comprise a pre-defined inspection catalogue concerning agri-food products, non-food products and services. The Office also verifies whether entrepreneurs carry out their activities in a legal and reliable way. As for non-food products, inspections also refer to general product safety and compliance with the New Approach Directive.⁶⁵ The Provincial Trade Inspection Offices also conduct their own activities and interventions in connection with alarming news from the market. Some of the inspected products are subject to specialized research, e.g. in laboratories run by UOKiK. The Office also conducts proceedings for appeals against decisions issued by provincial IH inspectors.

2.1
Calendar of events

2.2
Consumers' collective
interests and standard
contractual clauses

2.3
**Supervision over
The Trade Inspection
Authority**

2.4
Product safety and
market surveillance

2.5
Laboratories

IH inspections*

8254 agri-food product
inspections

4286 non-food products
and services
inspections

1012 general product
safety inspections

1552 inspections on
compliance with New
Approach Directive

2652 other inspections,
such as the legality
of business activity,
reliability, price re-
vealing inspections

143 UOKiK decisions
on appeals against
provincial IH
inspectors**

* Data concern: inspections recognised in the UOKiK annual plan, IH own inspections, intervention inspections. The information on fuel quality inspections is presented later in the Report.

** The number refers to appeals against decisions on the indicated inspections categories and on decisions regarding fuel quality.

*** The Team for Falsification and Illegal Trade of Medical Products and Other Falsified Products Meeting the Criteria of a Medical Product.

Overview of inspection activities

Agri-food product inspections

Retail food must be compliant with quality requirements, both product features as well as product designation. It allows consumers to choose a product which will be relevant to their needs. It is prohibited by law to apply any practices which can be misleading, including falsification of food products. UOKiK prepares plans for IH activities to allow for a comprehensive inspection of food product groups in terms of agricultural and food quality in retail sale. In 2017, there were **17 national inspection subjects** in this respect. The inspections mainly revolved around products which called for a close cooperation with the State Sanitary Inspection (PIS) due to their leading role in supervision.

Inspections of non-food products and services

UOKiK cooperates closely with provincial IH Inspectors also in the scope of inspections of non-food products and services. In 2017, there were **13 inspection subjects** in this respect. The most frequent activities concerned quality and labelling of textile products and correct information about the prices. The purpose of the inspection was also to verify, inter alia, the content of certain chemical substances and the correct marketing of the equipment or car parts which require certificates of approval. In the latter case, a total of **121 entrepreneurs were examined**. As a result, reservations concerned 11 out of 351 batches with regard to certificates of approval.

Inter-departmental cooperation – non-food products and medicines

The Office takes part in the Cooperation Forum for Chemical Surveillance as part of arrangement concluded between national institutions in charge of this area. The forum allows to undertake joint initiatives pertaining to inspections and exchange best practices in enforcement of the chemical regulations. The cooperation also comprises exchange of information on law infringements. The arrangements to be made in the forum are reflected through chemical surveillance activities undertaken by the Trade Inspection Authority. The Forum is convened twice in a year.

UOKiK is not directly competent to analyse medical products. However, due to its role in consumer protection system, the Office takes part in meetings of the inter-departmental team for falsified medicines.*** The purpose of the team is to minimize trade in falsified or illegal medicines which may pose a threat to human health or life.

General product safety inspections

Products earmarked for the Polish market must be compliant with general safety requirements. The Trade Inspection Authority verifies whether the products do not pose a threat to human health or life in ordinary use. The examples of inspection priorities in 2017 on general safety were as follows: children's clothing, articles and furniture for small children, grills, tinders, do-it-

Cooperation with the State Sanitary Inspection

In 2017, the Trade Inspection Authority in concert with the State Sanitary Inspection controlled, inter alia, food services provided by catering companies to hospitals, sanatoria, orphanages, social care homes. The inspections covered 73 establishments which provided services to 282 institutions. Irregularities were found in over 71% of the establishments. The most evident non-conformities included: missing information about allergens, use of cheaper replacement products, use of expired products, storing food in improper conditions, underweight portions, non-compliance of menus with the contracts.

Moreover, the IH in cooperation with the State Sanitary Inspection also inspected dietary supplements. The Trade Inspection Authority paid particular attention to whether the information provided on the packaging or websites did not mislead consumers with regard to properties of the products. Over 80 Polish undertakings from all across Poland were examined. As a result of the inspection, 20% of product batches were challenged,

which is 10% less than in the previous year [2016]. The majority of reservations concerned labelling, e.g. lack of list of ingredients, necessary warnings, or the recommended daily dose. Several samples were examined in laboratory conditions, with 11% of the samples being impugned. Following the inspection, the businesses withdrew the supplements which failed to meet the requirements from the market. 2017 was also marked by inspections conducted in connection with recommendations of the European Commission. They referred, without limitation, to products covered by quality systems, protected geographical indication (PGI), protected designations of origin (PDO), Traditional Speciality Guaranteed (TSG), and organic products. The priorities also concerned products subject to EU control systems: fresh fruits and vegetables, olive oil. The inspectors selected products which were most often impugned as part of previous inspections, e.g. frozen fish, catering products (including meat and fish dishes, alcohol and alcohol-free beverages).

Ecodesign and inspections of special-purpose bulbs

Ecodesign consists of a number of EU regulations which aim at popularisation of energy-efficient solutions in lightning. Energy-intensive products are gradually withdrawn from the market, but there are exceptions to special-purpose bulbs regulated by law. The products of this type must have specific technical parameters and cannot be intended for domestic use. In February 2017, UOKiK organised a meeting with the Lightning Equipment Producer Association "Pol-lighting" to discuss scheduled inspections of such bulbs. The Office also prepared a training in applicable requirements for special-purpose lamps for, inter alia, IH inspectors. In Q2 2017, a national inspection of light sources for specialised purposes was carried out to see whether they are compliant with the Ecodesign requirements.

yourself equipment and garden tools, bikes for youths and adults. Apart from inspections requested by UOKiK, provincial inspectorates also carried out their own inspections and interventions resulting from, inter alia, complaints from consumers and entrepreneurs. In total, **3819 products were examined**,⁶⁶ with irregularities having been found in 31% of the cases. 86 products were examined in laboratory conditions, with the safety of 43% of articles being impugned.

Inspections within the scope of EU requirements – the New Approach Directive

Products available in the European Union are obliged to meet specific safety requirements, regardless of which Member State they have been manufactured in or placed on the market. Inspection activities aim at enforcing the EU requirements. UOKiK defines priority areas in this respect through its Annual Trade Inspection Plan. In 2017, these were, among others, **toys, electric equip-**

ment, machines (electrical appliance), and personal protective equipment. Inspections allow to verify, inter alia, the documentation, labelling, and construction properties of the products. In 2017, **5503 products** were subject to IH inspections. Reservations were made as to the third product. As a result of lab activities, nearly 36% of products out of 689 examined goods has been challenged.

⁶⁶ The number in question concerns both inspections requested by UOKiK as well as own inspections conducted by IH officers.

2.4

Product safety and market surveillance

UOKiK is in charge of surveillance over **a general safety of non-food products**⁶⁷ that cannot pose a threat to their users in an ordinary use. The Office is also one of the national institutions **supervising the market in terms of compliance with EU requirements** as part of conformity assessment system for selected categories of non-food products.⁶⁸ Products located in the European Union must comply specific requirements in order to ensure the free flow of safe goods within a single market. The responsibility in this respect lies with entrepreneurs and their operations are verified by, among others, the Office. UOKiK closely cooperates with the

Trade Inspection Authority as part of inspection activities both with regard to general product safety and conformity assessment system. Moreover, the Office carries out proceedings aimed at removing any irregularities and threats to the market.

General product safety activities

The Office analyses the results of IH inspections and warnings, in particular consumer complaints. The information obtained by the Office is used in administrative procedures. Where a product poses a threat to the life or health of its users, UOKiK may impose certain obligations on the manufacturer or distributor, including mandatory product recall or withdrawal (market or consumer level). The Office may also impose a financial penalty on the entrepreneur. However, entrepreneurs already at the stage of proceedings usually conduct activities aimed at removing threats or unsafe products from the market. As a consequence, the majority of proceedings is discontinued.

As in previous years, UOKiK's actions usually concerned **children's clothing** due to the availability of these products and frequency of irregularities. Such threats primarily concern strings, cuffs, and elements which can easily fall off. They pose a real threat to the youngest users.

UOKiK activities in numbers – 2017

- general product safety
- compliance with the EU requirements (the New Approach Directives)

undertaken explanatory activities



new proceedings



issued decisions*



– of which discontinuation of the case due to corrective measures undertaken by the entrepreneur and elimination of the threat



– of which imposing obligations



– of which imposing financial penalties

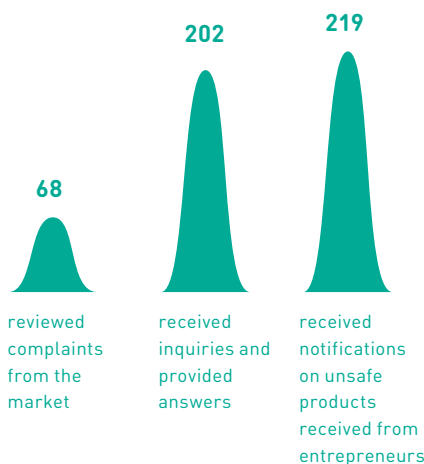


decisions on applications for reconsideration of the case



* Examples of decision types, so the data does not sum up to the total number of issued decisions.

UOKiK activities in numbers – 2017



Protection of life – carbon monoxide detectors

In 2017, carbon monoxide detectors, which are products directly related to the protection of customer life, became the centre of attention of the Office.

Carbon monoxide is a strongly poisoning gas which poses a threat to human life. It may originate from leaky chimneys, coal, gas or oil stoves, as well as gas cookers.

Over 100 people in Poland die every year as a result of CO asphyxiation and nearly 2000 are poisoned.**

Carbon monoxide is odourless and colourless. It can be sensed by specialised detectors. Non-compliance with standards for these type of products may cause death, which is why UOKiK ordered an inspection to be carried out at the turn of 2016 and 2017. Subsequent inspections were conducted in Q3 2017. The Trade Inspection Authority verified at that time 92 detector models and challenged one third of them. The highest number of irregularities pertained to labelling and manual. They lacked, inter alia, major consumer warnings, e.g. that the device must be installed by a specialist. Selected models were examined in laboratory conditions which proved that certain carbon monoxide alarm systems are not working properly. In 2017, 4 proceedings came to an end, as a result of which over 600 faulty detectors were withdrawn from the market or their threats were removed.

** The data available at <http://www.straz.gov.pl/porady/czad>.

Information on unsafe products

Notifications on unsafe products

An entity to have provided or released a product on the market is in charge of its safety. Entrepreneurs are obliged by law to notify consumers and UOKiK about any products which may pose a threat. They also use notifications to indicate undertaken corrective measures which are monitored by UOKiK. The Office publishes the submitted notifications on its website. In 2017, 219 notifications were received by the Office, 87% of which pertained to mechanical vehicles. They were mainly notifications from large automotive corporations. Other concerned, inter alia, child care articles, toys, and electric equipment. If UOKiK finds that the product can also be available in other countries, information about the threat is provided to the RAPEX.

Register of unsafe products

Products considered by UOKiK to be non-compliant with safety requirements are entered into the Register of Unsafe Products.

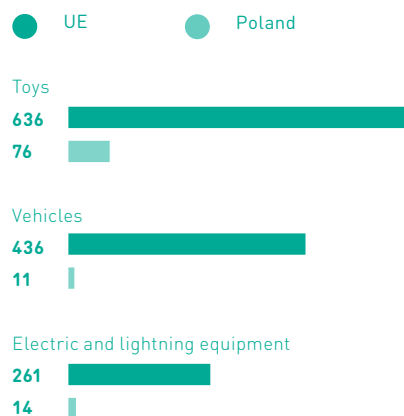
See

Register of Unsafe Products
Notification database
RAPEX System

RAPEX System

RAPEX is a major source of information on unsafe products in the EU. The European Commission publishes on its website notifications about reported products on a regular basis. In 2017, Member States submitted to the system 2,199 notifications, 133 of which were for products first placed on the EU market by Polish manufacturers or importers. UOKiK is in charge of the Polish contact point within RAPEX. In 2017, the Office submitted 122 notifications regarding unsafe products that were identified on the Polish market.

Most often product notifications in the RAPEX



Product safety activities in the EU

The Office carries out proceedings to verify compliance between products and the EU regulations – the New Approach Directives. If it is determined that a particular product does not conform to the requirements, UOKiK orders the removal of non-conformities, product withdrawal, or recall from buyers. Over half of the decisions issued in 2017 lead to discontinuation of the proceedings. This means that

67. Surveillance is exercised in line with the Act of 13 April 2016 on Conformity Assessment and Market Surveillance Systems (Journal of Laws, item 542, as amended).
68. The Act of 25 August 2006 on Fuel Quality Monitoring and Control System (Journal of Laws of 2018, item 427, as amended).

entrepreneurs removed irregularities or withdrew the products from the market. UOKiK's actions usually concerned toys and electric equipment.

Information on products not compliant with requirements.

Record of non-conforming or hazardous products.

UOKiK keeps a register of non-conforming or hazardous products. In 2017, **142 products** were entered in the register, and 45 products were unlisted due to elimination of threat from the market, e.g. through market recall.*

ICSMS System

The Information and Communication System for Market Surveillance (ICSMS) **enables the collection of information on products that do not meet the requirements of EU harmonisation legislation**. It also allows for the exchange of such information between market surveillance authorities of the EU Member States. UOKiK is in charge of the Polish contact point within ICSMS. In 2017, UOKiK submitted 15 notifications to the system due to the location of the trader placing a non-conforming product on the market in another EU Member State.

See

Register of non-conforming or hazardous products ICSMS

* Article 61 sec. 4 of the Act on Conformity Assessment and Market Surveillance Systems.

Health protection – safety of anti-pollution masks

One of the symptoms of air pollution is smog. Dangerous chemical compounds and dust are detrimental to human health. They may give rise to allergies, lung diseases, and even cancer. With growing awareness of this subject, consumers are becoming more and more interested in filtering half-masks used for protection against molecules – anti-pollution masks. In connection with the rising popularity of these products and complaints, UOKiK requested an inspection in this regard. **In 2017, the IH verified 10 mask models.** All of them were tested in the laboratory of the Central Institute for Labour Protection – National Research Institute in Łódź. Two models did not feature adequate protective properties and were permeable to harmful dusts that are present in the air. UOKiK has thus far instigated administrative proceedings in one case concerning a non-compliant half-mask. In another case, the entrepreneur appealed with UOKiK against the decision of the Trade Inspection Authority prohibiting further sale of a non-compliant product. The two cases were continued in 2018 and the companies concerned may not sell half-masks until a ruling is passed.

In the case of three other half-masks, the inspectors found that they did not satisfy certain official requirements, e.g. in manuals. The Trade Inspection Authority sent a letter to the entrepreneurs concerned, informing them that they could undertake voluntary corrective efforts. All entrepreneurs undertook efficient corrective measures which consisted in supplementing the official requirements.

Polish customs officers inspected nearly

1,5

million toys undergoing customs clearance at the border

Effectiveness of UOKiK's activities: toys (2017)

148

notifications sent to entrepreneurs

67 309

recalled products (items)

920

removed irregularities

2.6

Fuel quality control system

2.7

Out-of-court consumer dispute resolution

2.8

Court judgements

2.9

Cooperation with consumer organisations and consumer ombudsmen



Toy safety

Children are a particularly vulnerable recipient group. UOKiK regularly orders inspections of products intended for children. In particular, the content of phthalates is verified – these are chemical compounds which make the plastic soft and flexible. The standards allow phthalates to reach a specific concentration. Once exceeded, they may be detrimental to human health. In terms of product safety, the majority of complaints and inquiries addressed to UOKiK in 2017 concerned toys.

At the end of 2016, as part of the Visegrád Group (V4) Poland initiated activities regarding unsafe toys imported outside the EU. The purpose of the action was to eliminate any toys which may constitute a chemical threat and undergoing customs clearance in the V4 region and to strengthen cooperation in inspecting whether the products imported from third countries are safe. In Poland, the Czech Republic, Slovakia, and Hungary alike, the customs and authorities cooperated with each other to eliminate the threats. The activities in Poland were undertaken in September and October 2017, and involved UOKiK, the National Fiscal Administration

(KAS), and provincial IH inspectors. During the campaign, Polish customs officers inspected nearly 1.5 million toys undergoing customs clearance at the border. If there were any reservations, the case was referred to the Trade Inspection Authority which issued 58 opinions, 49 of which were negative. As a result, nearly 700,000 toys have not been allowed to enter the Polish market. Some of them lacked the required documentation or labelling, which meant that no there was no evidence of fulfilment of the safety requirements in effect in the EU. 55 samples were examined in laboratory conditions, 25 of them were found to feature an excess in the concentration of phthalates, sometimes even by several hundred times. All the challenged samples came from China. Thanks to a joint action of the agencies, nearly 30 thousand toys were destroyed, i.e. all the toys which contained unacceptable phthalates levels. In the years 2013-2017, in connection with the inspections of toys, UOKiK issued 142 decisions concerned with products containing phthalates. As a result, over 74.5 thousand items which posed a serious threat to children's health were recalled from the market.

UOKiK is in charge of the national market surveillance system

It creates a number of institutions relevant to specific non-food products. UOKiK monitors in particular inspection activities for compliance with the requirements specified in the selected acts of the EU harmonisation legislation (so-called "conformity assessment system").

UOKiK consists of a Market Surveillance Steering Committee. It is an inter-departmental team which is used to coordinate various institutions as part of the system market surveillance system. The team is crucial to ensure a coherent approach to tasks. An important element of the efficient market surveillance system involves a close cooperation between customs office and market surveillance authorities which allows to identify unsafe products already at the border and prevent them from entering the country.

2.5 Laboratories

Some products subject to inspections made by the Trade Inspection Authority is subject to a specialised examination. Such examination usually takes place in the UOKiK's laboratories. The Office has **eight research units at its disposal**, five of which deal with food products. The scope of activities of the remaining laboratories include: testing of fuels, toys, textiles, and other non-food products. Each laboratory holds **a Polish Centre for Accreditation certificate**, which means that they are competent to assess whether the samples subject to examination are compliant with the applicable regulations. Thanks to specialised analyses, it is possible to recall products of an inappropriate quality or posing a threat.

The Office laboratories function in line with the quality management system specifying the general requirements for testing laboratories in accordance with PN-EN ISO/IEC 17025. This standard specifies the requirements for technical competence in the field of measurements, among others. Every year, the UOKiK units take part in a several dozen programmes for interlaboratory comparative studies, the results of which point to their high operational standards. The laboratories also develop new examination methods.

Activities undertaken in the UOKiK laboratories in numbers – 2017

4759

samples examined, 2578 of which were compliant with the statement or legal provisions

41 143

parameters

60

proficiency testing
programmes

38

new research
methods

**Thanks to inspection
activities, the number of
irregularities discovered
dropped considerably,
and has remained,
since 2015, below**



2.6 Fuel quality control system

As other products, fuels must meet certain quality standards. UOKiK manages the fuel quality control and monitoring system in this regard.⁶⁹ The Office prepares inspection plans, which are later implemented by the provincial IH offices. The Office also runs a specialist fuel laboratory. As for non-conforming fuels, UOKiK issues decisions requiring businesses to pay costs of laboratory tests of fuel. Moreover, the Office also conducts proceedings for appeals against decisions issued by provincial IH inspectors who impose sanctions on inspected businesses for failure to post information on the content of bio-components in the offered liquid fuels at their fuel stations. The list of petrol stations and wholesalers, along with the results of conducted inspections, is published by UOKiK on its website.

The Trade Inspection Authority scrutinises almost all types of fuels available on the market. **Regular inspections have been conducted since 2003**. Back then, the share of liquid fuels that failed to meet the quality requirements totalled 30%. Over time, **thanks to inspection activities, the number of irregularities discovered dropped considerably**, and has remained, since 2015, below 3%.

⁶⁹. The Act of 25 August 2006 on Fuel Quality Monitoring and Control System (Journal of Laws of 2018, item 427, as amended).

2.6

Fuel quality control system

2.7

Out-of-court consumer dispute resolution

2.8

Court judgements

2.9

Cooperation with consumer organisations and consumer ombudsmen

LIQUID FUELS

939

randomly controlled stations and collected samples

2.34%

of challenged samples

LPG

374

randomly controlled stations and collected samples

2.14%

of challenged LPG samples

AUDIT RESULTS

43

suspected offense notifications submitted to prosecutor's office

48

UOKiK decisions ordering businesses to cover the costs of laboratory tests

69

information provided to the Energy Regulatory Office (URE) on violation of the conditions of licenses for trading in liquid fuels and violations of the Energy Law

10

UOKiK decisions on appeals against the obligation to cover the costs of laboratory tests

7

IH decisions on recall of the non-conforming fuels

Overview of activities

The quality of liquid fuels is controlled in two ways. Above all, **the selected fuel stations are randomly examined**. In 2017, 2.34% of selected samples were challenged, almost the same amount as in 2016 (2.26%). The irregularities were more often identified in petrol (1.5%) than diesel (3.44%). The random Liquefied Petroleum Gas (LPG) tests conducted in 2017 have shown irregularities in the case of 2.14% of the samples analysed (1.42% the year before).

The Trade Inspection Authority in addition scrutinises those entrepreneurs which have been accused with irregularities as part of prior inspections or which were indicated in **alarming warnings from the market**. **The information is obtained from drivers, the police, customs and tax offices**. In 2017, inspectors challenged 3.76% of oil and petrol samples.

The IH issued several decisions on market recall for any non-conforming fuels. Moreover, the institution provided the Energy Regulatory Office (URE) with information on 69 filling stations and fuel wholesalers that were found in breach of the conditions of licenses for trading in liquid fuels and of provisions of the Energy Law. The President of the URE is empowered to impose relevant fines in this respect. **If there was a reason to believe that an offence has been committed, inspectors submit relevant notifications to the prosecutor's office.**

UOKiK cooperates with the Ministry of Energy on a regular basis. The goal is to exchange information on the situation on the fuel market. In 2017, a close cooperation was established due to amendments to the national regulations concerning liquid fuels.



2.7

Out-of-court consumer dispute resolution

The Act on Out-of-Court Consumer Dispute Resolution entered into force on 10 January 2017. The changes in the national legislation resulted from the need to implement the EU regulation in this regard.⁷⁰ The Act introduces a new model for out-of-court consumer dispute resolution, which is also referred to as amicable or alternative dispute resolution (ADR).

UOKiK has been vested with new competence regarding **proceedings for a register of entities authorised** to conduct amicable dispute resolution proceedings. The Office's activities mainly concern the assessment of applications and arrangements with institutions applying for ADR status. Prior to issue of the decision, UOKiK analyses a number of documents specifying how the organisation operates, such as regulations, articles of association.

In the first year since the establishment of the ADR system in Poland, authorised entities **received over 18 thousand cases**. The applications were usually addressed to the Trade Inspection Authority – over 8.4 thousand. They mainly concerned shoes, clothes, audio/video devices and white goods, as well as air travel. Consumers also reported problems with utility suppliers, telecommunications companies, railway operators, and banks.

UOKiK **monitors operations carried out by ADR entities**, e.g. compliance

ADR entities registered in 2017

PUBLIC ENTITIES				PRIVATE ENTITIES	
industry				industry	
financial services	telecommunications services and postal services	usługi energetyczne	railway transport services	financial services	aviation transport services
The Financial Ombudsman The arbitration court attached to the Polish Financial Supervision Authority	The President of the Office of Electronic Communications	The Negotiation Coordinator attached to the President of the Polish Energy Regulatory Office	The Rail Passenger Rights Ombudsman attached to the President of the Office of Rail Transport	Banking Arbitrator attached to the Polish Bank Association	Air Passenger Watchdog "Friendly Flying"
horizontal					
Trade Inspection Authority – sale of goods and other services, such as tourist, real estate development, and renovation services					

with their notification obligations. The Office also organises periodical meetings with those institutions to ensure an efficient implementation of tasks. Two such meetings were conducted in 2017 – in February and November.

⁷⁰ The Act of 23 September 2016 on Out-of-Court Consumer Dispute Resolution (Journal of Laws of 2016, item 1823). The new law is intended resulted from the need to into national legislation Directive 2013/11/EU of the European Parliament and of the Council of

21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (Official Journal of the European Union, L 165 of 18.06.2013, p.1).

In 2017, UOKiK expressed opinions on a number of legislation projects related to the established ADR entities and their competence. The Office also developed regulations which adjusted the rules of operation of the Trade Inspection Authority to its new tasks in this regard (for more information, please refer to the chapter on legislation work).

Information on the amicable dispute resolution system

REGISTER OF ADR ENTITIES

Register of ADR entities is available on UOKiK website. In 2017, 8 new authorised entities were entered into the register, 6 of which were public and 2 of which were private. The date included in the register is also submitted to the European Commission which publishes the list of all institutions carrying out such proceedings that are notified by EU Member States via ODR (Online Dispute Resolution) platform.

WEBSITE

UOKiK conducts a website intended for out-of-court dispute resolution www.polubowne.uokik.gov.pl. The website also contains a register in the form of a browser of authorised institutions. In 2017 the Office conducted an information campaign on this matter (for more information, see the chapter on information and educational activity).

CONTACT POINT

UOKiK runs a contact point to provide aid to consumers and entrepreneurs on matters pertaining to out-of-court dispute resolution. In 2017, there were 328 electronic advices and 504 phone advices. The majority of the cases concerned consumer sales. UOKiK also gave advices at individual meetings.

⁷¹ The decisions passed after 1 September 2015 are published in the court judgements database.

⁷² File reference number VI AmA 3/17.

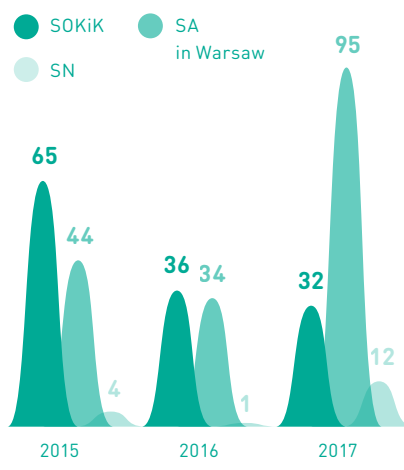
⁷³ File reference number XVII AmA 20/15.

2.8 Court judgements

Judgements in cases concerning the violation of collective consumer interests

In matters pertaining to collective interests of consumers, entrepreneurs have the right to appeal against UOKiK's decisions to the Regional Court in Warsaw – the Court of Competition and Consumer Protection (SOKiK) in Warsaw. If the court does not agree with the settlement referred to in the decision, it is allowed to repeal or change it, in particular by changing the amount of financial penalty imposed on the entrepreneur. The Court of Appeal in Warsaw (SA in Warsaw) is the court of second instance, and the Supreme Court (SN) decides on cassation appeals. The UOKiK website contains a **judicial decision database**.⁷¹

Judicial decisions in cases concerning infringement of collective consumer interests in the years 2015-2017



Overview of judgements

SOKiK – the judgement of 25 September 2017 on the appeal of Allianz Polska⁷²

In 2013, UOKiK issued a decision referring to the provisions of template insurance contracts, fixtures and fittings as well as autocasco. The insurer applied provisions excluding the company's liability in situations where compensation had to be paid by law. These were, among others, the cases of exclusion of liability for damage caused by persons close to the insured person or persons performing work in the apartment. As a result, the company's clients were misled about their rights. By the same token, they were able to pursue claims. SOKiK dismissed the entrepreneur's appeal and sustained the financial penalty of over PLN 5 mn imposed by UOKiK. The court found that the action of Allianz was intentional and the punishment was adequate.

SOKiK – the judgement of 28 September 2017 on the appeal of Open Finance⁷³

In 2014, the Office accused Open Finance of resorting to unfair market practices while informing about the possibility of taking out unit-linked insurance (ULI) policies. The Company highlighted the benefits and passed over the circumstances in which the investment may generate losses. Nor did it report on the costs associated with termination of the contract dur-

ing its term. SOKiK shared the Office's stance and sustained the penalty of over 1.6 million.

SOKiK – the judgement of 24 October 2017 the appeal of Polkomtel⁷⁴

UOKiK concluded through a decision in 2014 that Polkomtel was guilty of violation of collective consumer interests. **The company would make it difficult for consumers to exercise their right to withdraw a distance contract or terminate it.** Polkomtel provided unreliable information on the rights of customers concluding distance contracts. For these actions, UOKiK imposed a financial penalty of over PLN 8 million. SOKiK fully upheld the Office's decision and dismissed the company's appeal.

Court of Appeal – the judgement of 8 March 2017 the appeal of P4⁷⁵

In 2011, UOKiK imposed a fine of over PLN 495 thousand on P4 for its **misleading advertising**. On the basis of the advertisement's content, the consumer could expect free text messages, whose number was specified in the offer, until the end of the account's validity period. The situation looked different in reality: depending on the topped-up amount, not only the number of the text messages, but also the period of their validity was limited. The decision was upheld by SOKiK in 2015. In 2017, the matter was brought before the Court of Appeal which held that UOKiK was incorrectly determined the extent of the offence's damage potential. As a result, the court and reduced the penalty down to over PLN 330 thousand.

SN – the judgement of 26 April 2017 on the cassation appeal by UOKiK⁷⁶

In 2012, UOKiK imposed a fine of over PLN 0.5 million on Polbank. When informing customers about the rules for monetary award, the entrepreneur **passed over an important information** which was one of the conditions. Polbank was taken over by Raiffeisen which appealed with SOKiK and subsequently submitted an appeal. The bank claimed that it did not have the right to participate in the proceedings because it had not taken the public law obligations pertaining to Polbank. The Court of Appeal shared that line of reasoning and decided that there must be a special regulation which allows the transfer of public law obligations. According to the court, Article 494 of the Code of Commercial Companies is not a sufficient legal basis in this regard. The President of UOKiK lodged a cassation appeal, as a result of which the judgement was dismissed by the Supreme Court and the case was subject to another review.

Judgements on general product safety issues and conformity of products with EU requirements

Companies are entitled to appeal against UOKiK decisions concerning general product safety issues and conformity of products with EU requirements (the New Approach Directives) to the Provincial Administrative Court (WSA). Moreover, companies may also lodge a cassation appeal against WSA judgements to the Supreme Administrative Court (NSA).



Complaints and judgements issued – 2017

- general product safety
- compliance with the EU requirements (the New Approach Directives)

Complaints to UOKiK decisions made by entrepreneurs with the WSA

3 ●●●
5 ●●●●●

Complaints to UOKiK decisions dismissed by the WSA

2 ●●
1 ●

Complaints to UOKiK decisions sustained by the WSA

0
0

Cassation appeals against WSA judgements lodged with the NSA

1 ●
1 ●



Case law on matters concerning appeals against decisions made by provincial IH inspectors⁷⁷ and decisions imposing an obligation to incur lab fees

The President of UOKiK is an authority for appeals against decisions made by provincial IH inspectors in connection with current proceedings and, in this regard, he or she settles cases for which appeal measures were submitted with regard to administrative acts issued by inspectors. Moreover, UOKiK conducts proceedings and makes rulings and decisions imposing on an entrepreneur an obligation to cover the costs of fuel quality tests.

It is allowed to appeal to the WSA against UOKiK rulings. Cassation appeals against WSA judgements are processed by the Supreme Administrative Court.

Complaints and judgements issued – 2017

25

Complaints to UOKiK decisions made by entrepreneurs with the WSA

11

Complaints to UOKiK decisions dismissed by the WSA

3

Complaints to UOKiK decisions sustained by the WSA

⁷⁴. File reference number XVII AmA 26/15.

⁷⁵. File reference number VI ACa 1644/15.

⁷⁶. File reference number III SK 15/16.

⁷⁷. The data does not contain judgements on general product safety issues and conformity of products with EU requirements (presented in a separate table).

2.9

Cooperation with consumer organisations and consumer ombudsmen

Cooperation with consumer ombudsmen

UOKiK cooperates with district (municipal) consumer ombudsmen who inform the Office about any problems on the market identified by them. A direct communication is also ensured as part of meetings in the Branch Offices of UOKiK which aim at information exchange and integration of the environment. Regardless of the above, UOKiK decided to improve communication with ombudsmen. As a result, it prepared a special newsletter, with the first two editions being issued in November and December 2017.

The President of UOKiK is assisted by the **National Council for Consumer Ombudsmen** which acts as an opinion and counselling body. In 2017, the Council was convened twice to discuss a number of issues related to the implementation of consumer policies.

Cooperation with non-governmental organisations

UOKiK works closely with non-governmental organisations involved in the protection of consumer rights. Joint activities pertain to education and information policy, counselling, warning about threats, and issuing opinions on legal acts.

The Office organises competitions through which it orders these organisations to carry out tasks related to providing support on a case by



case basis.⁷⁸ In 2017, UOKiK allocated a total of nearly PLN 2.7 mn for this purpose. The amount is similar to the one spent in 2016.

As in previous years, UOKiK cooperated in 2017 with **the European Consumer Centre (ECC)**, which is a part of the European Consumer Centres Network – ECC-Net. The network comprises all EU Member States, along with Iceland and Norway. ECC's top priority is to inform consumers about their rights in relation to cross-border purchases of goods and services and

to help resolve any disputes in this regard. In Q1 2018, the Centre was incorporated into the UOKiK structure.

⁷⁸ The rules for commissioning tasks to NGOs for consumer protection and the funding procedures are laid down in the Act on Public Benefit Activities and Volunteer Work. The amount of funding that may be allocated for such

activities is determined annually in the State Budget Act. Information about calls for proposals is posted on UOKiK's website and in UOKiK's Public Information Bulletin, and also made available in the registered office of UOKiK.

2.6

Fuel quality control system

2.7

Out-of-court consumer dispute resolution

2.8

Court judgements

2.9

Cooperation with consumer organisations and consumer ombudsmen

Statement of grants awarded – 2017

FREE COUNSELLING AND LEGAL ASSISTANCE

Organisation:

Polish Consumer Federation

Grant amount:

PLN 1.3 mn

Task results:

64 772 legal advices, including:

- 4 955 written addresses
- 4 270 legal advices
- 54 887 direct advices
- 660 pleadings

CONSUMER HELPLINE IN 2016-2017 (A TWO-YEAR CONTRACT) – 2017

Organisation:

Association of Polish Consumers and Consumer Foundation

Grant amount:

PLN 1.1 mn

Task results:

72 021 advices

CONSUMER E-COUNSELLING CENTRE (TWO-YEAR CONTRACT) – 2017

Organisation:

Association for the Districts

Grant amount:

PLN 225 thousand

Task results:

21 050 advices

10.000 flyers and 1000 posters prepared by UOKiK have been printed and distributed

SENIOR CONSUMERS AND DIRECT SALES – RIGHTS AND THREATS

Organisation:

"Aquila" and "Euro-Concret" Associations

Grant amount:

PLN 40.9 thousand

Task results:

3300 guides on consumer rights for seniors were prepared and distributed

9 meetings with senior citizens in various locations were organised and held

3.1
Legislative work

3.2
Social surveys
and market analyses

3.3
Information
and educational activities

3.4
International cooperation



3.1 Legislative work

UOKiK co-creates legal solutions aimed at developing a legal system that will efficiently protect consumer interests and support the development of competition. Apart from regulations designed by the Office, it is equally important to ensure that the legislation process of government and non-government projects is monitored. In 2017, UOKiK analysed a total of 1589 draft acts and positions to draft acts of the Sejm, with a view to issuing an opinion on the potential impact on competition and the situation of consumers.

3.1.1 National legislation

Legislative work in UOKiK's area of competence

Regulations implementing the Act of 23 September 2016 on Out-of-Court Consumer Dispute Resolution

The Office prepared a number of documents which adjust the current regulations to solutions provided for in the Act on Out-of-Court Consumer Dispute Resolution. The changes concerned, among others, the rules of operation of the Trade Inspection Authority and remuneration issues for recently established ADR entities.

In 2017, UOKiK also issued opinions on legal acts in terms of compliance with the requirements of the Act of 23 September 2016 on Out-of-Court Con-

sumer Dispute Resolution, e.g. regulations on the institution of Railway Passenger Rights Ombudsman acting within the office the President of the Office of Rail Transport, Negotiation Coordinator acting within the office of the President of the Energy Regulatory Office and other public entities conducting proceedings for out-of-court consumer dispute resolution.

Framework project for the Draft Act amending the Act of 16 September 2011 on the Protection of the Rights of Buyers of Apartments or Detached Houses (so-called Developer Act)

The main purpose of the suggested amendments is to improve the efficiency of protection of buyers of apartments or detached houses, e.g. where the developer goes bankrupt. The increased consumer protection on the market entails both new legal reg-

List of regulations

The Regulation of the Council of Ministers amending the Regulation on the manner of co-operation of the Trade Inspection Authority bodies with the district (municipal) consumer ombudsman, central and local government administration authorities, inspection authorities, and non-governmental organisations representing consumer interests.

The Regulation of the Prime Minister amending the Regulation on the principles of organisation of provincial IH inspectorates.

The Regulation of the Prime Minister – Regulations for the organisation and operations of the Trade Inspection Authority for out-of-court resolution of consumer disputes.

The Regulation of the Council of Ministers amending the regulation on principles of remuneration paid to employees other than civil servants hired in government administration offices and the employees of other units.

ulations as well as the specification of already developed solutions.

One of the priority is to better protect the advance payments made by future apartment owners. UOKiK intends to do away with the unsecured type

of open housing trust accounts. Accounts of this type may compromise customers' savings where the investing company goes bankrupt. The draft regulation specifies matters related to the maintenance of a housing trust account, including how to make transfers to and from this account, and provides for controlling obligations of the bank. Pursuant to the UOKiK's suggestion, the customers' contributions are to be conditioned on the progress of construction work at the site. This will mitigate the risk of all money being lost in the case of a potential bankruptcy of the developer or of the bank. Prior to transferring the money to the developer, the bank will be required to verify diligently whether the developer has the title to the land, whether the building permit is valid, and whether no debt restructuring or bankruptcy proceedings are in progress. If any problems are encountered, the bank will have the right to suspend the payment until all irregularities are corrected. UOKiK intends to regulate residence reservation agreements concluded, for instance, for a period of time required to obtain a bank loan. The suggested changes also comprise pre-contractual obligations of developers, procedures for handing over apartments and reporting defects, sanctions for failure to provide the buyer with protection measures, along with the rights and obligations of the parties to the construction contract in the event of bankruptcy of the bank keeping the housing trust account.

In connection with the suggested regulations, UOKiK conducted an analysis of the situation on the development (real estate) market and scrutinised the scope of bankruptcy on the part of development companies and

housing trust accounts offered by banks. Moreover, the Office also engaged in consultations with the Ministry of Infrastructure and Construction as well as the Ministry of Finance. The issue of eliminating open housing trust accounts was subject to an opinion by the Economic Committee of the Council of Ministers that shared the view expressed by the Office and recommended that UOKiK and the Ministry of Infrastructure and Construction jointly prepare a draft act amending the Development Act.

Regulation amending the Regulation on information provided for the purpose of issuing an opinion on a scheduled state aid

The amendment adjusted the previous national legislation to the amended legal act, and in particular to Regulation (EC) as regards the notification forms and information sheets.⁷⁹

Legislative work performed on the initiative of other institutions

Draft Act amending the Civil Code, the Code of Civil Procedure, and the Act on Consumer Rights

The Act came into being on the initiative of the Minister of Justice. The basic regards made by UOKiK concerned the changes regarding the statute of limitations for claims pursued by entrepreneurs against consumers. The Office found that they should not be placed in the Act on Consumer Rights which substantially pertains to the nature of distance contracts and contracts concluded away from the business premises. The changes suggested by the Ministry are horizontal in nature, covering each and every case of justified claims, which is why they should be resembled in

the Civil Code. The UOKiK's position was shared by the Ministry of Justice. Moreover, UOKiK expressed a number of remarks, mainly of constitutional nature, regarding the suggested transitional provisions. According to one of the suggested solutions, any claims pursued before the entry into force of the act that did not fall under the statute of limitations would be governed by the previous limitation periods. The UOKiK's remark was shared by the legislator. The work on the act was continued in 2018.

Draft Act on Mortgage Loans and on Supervision of Mortgage Loan Brokers and Agents

2017 was marked by parliamentary work on the Draft Act on Mortgage Loans and Supervision of Mortgage Loan Brokers and Agents that was prepared by the Ministry of Finance. The Act was adopted on 23 March 2017 and entered into force on 22 July 2017.

1) Implementation of Directive 2014/17/EU

The Act implements Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/

⁷⁹ Regulation of the Council of Ministers of 12 December 2017 amending the Regulation on information provided for the purpose of issuing an opinion on a scheduled state aid (Journal of Laws of 2018, item 19). The changes resulted from Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No 794/2004.

EU and Regulation (EU) No 1093/2010. The act in question comprehensively regulates issues of mortgage loans.

The purpose of the regulations is to increase the comparability and transparency of the lenders' offers and strengthen consumer position on the mortgage loan market. The

act regulates, inter alia, basic information provided through a mortgage loan advertisement, the pre-contractual obligations of creditor and credit intermediary, rules for counselling services, activities related to the conclusion of a contract, obligatory contract clauses, early credit payment, contract withdrawal, requirements for mortgage loan intermediaries, agents, and staff, register of credit intermediaries, surveillance over intermediaries. The Act also forbids lenders to grant credits in currencies other than the currency pertaining to the majority of consumer's income or of their assets (or indexed/denominated in that currency).

UOKiK actively participated in the work on the draft Act by, inter alia, communicating a number of remarks and suggestions concerning the draft act. The remarks concerned, inter alia, obligatory information provided through advertisements (UOKiK's suggestion was to emphasise information on effective annual percentage rate – EAPR), procedure for entering into a contract, contractual provisions on the determination of interest rate (making any and all changes contingent on the reference rate), conditions under which credit intermediaries may refer to the term “independent adviser”, and the definitions of statutory terms, along with incorporating provisions on the register of lending institutions and surveillance on such



entities into the Consumer Loan Act. Most of UOKiK's postulates were implemented.

2) Changes in the Consumer Loan Act

a) Introduction of a register of lending institutions and PFSA surveillance over such institutions

From the very beginning of work on the mortgage loan act, UOKiK called for the introduction of an authority for supervision of lending institutions into the Consumer Credit Act, along with the establishment of a register of such institutions. The regulations envisaged requirements and, once met, the trader could carry out business activity consisting in granting consumer credits. Despite the introduction of a penalty for violation of these provisions, there was no institutionalised supervision, which raised concerns as to the efficiency of current regulations. In light of anticipated amendments to the Consumer Loan Act, a lending institution is allowed to could carry out business activity consisting in granting consumer credits once it is entered

into the register of lending institutions. The commencement date of this activity is the date on which the institution is entered into this register. The register is maintained by the Polish Financial Supervision Authority. Moreover, it is maintained in an ICT system and released on the PFSA website. An entry into the register is made at request of the entity that intends to conduct business activity consisting in granting consumer credits. The draft regulation also provides for requirements for applications for entry into the register of lending institutions as well as the amount of fee for entry applications as well as those for entry change or deletion. In line with applicable regulations, a lending institution is obliged to notify the Polish Financial Supervision Authority about each and every change in the data included in an entry into the register immediately, i.e. no later than 7 days from the date of such changes.

b) Changes related to European Commission's remarks as to the correct implementation of Directive 2008/48/EC

As part of works on the draft act, UOKiK prepared changes in the Consumer Loan Act, the purpose of which was to specify provisions challenged by the European Commission in its analysis of the act in terms of correct implementation of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. This specification comprised certain provisions concerning, inter alia, exclusions from applicability of the act, the definitions of terms provided for in the act, and information provided to consumers before the execution of a contract. The purpose of the introduced changes was to clearly exclude any doubts in interpretation which could potentially lead to the enforcement of the act contrary to its ratio legis.

c) New provisions on consumer loan advertisements

UOKiK also prepared changes in consumer loan advertisement regulations. The Consumer Loan Act includes a new provision, stating that the information referred to in Art. 7 (i.e. obligatory information provided in consumer loan advertisements with numerical data as to the cost of consumer loans) must be provided to the consumer in at least the same clear, readable, and audible format as the numerical data on the cost of consumer loans. The purpose of the additional requirement is to ensure that the information required under Art. 7 is exposed at least in the same way as the constituents of the advertisement that would call for their presentation. The above solution is an extension of the requirement for visibility and comprehensibility, provided for in Art. 7,

and intends to proportionally combine the level of fulfilment of those requirements with the manner of providing information which gives rise to an obligation to present information required under the act. For example, where an advertisement informs about a 0% commission, the remaining information should be equally emphasised so that consumers are able to familiarise themselves with it at ease.

There is also another solution: a creditor or credit intermediary in consumer loan advertisements other than those referred to in Art. 7 sec. 1, i.e. advertisements which do not present any numerical data on the costs of consumer loan, is obliged to provide consumers with information on the effective annual percentage rate in at least the same clear, readable, and audible format as other information presented in the advertisement.

The possibility of using the above solution results directly from Art. 4 sec. 1 of Directive 2008/48/EC. UOKiK put an emphasis on this solution due to the need to provide consumers with a clear and understandable information on credit costs as well as to encourage lenders to apply advertisements with APR as the only (and, at the same time, the most complete and most comparable) information on the cost of consumer loans. Under the influence of the comments submitted by UOKiK, an analogous solution was provided for advertising of mortgage loans.

Package of draft acts on loans indexed to/denominated in foreign currencies

UOKiK was involved in the work conducted by the Public Finance Commission concerning 3 draft acts on loans

indexed to/denominated in foreign currencies:

- MPs Draft Act on Restructuring Loans Denominated in or Indexed to Foreign Currencies other than PLN and Introduction of a Prohibition of Granting such Credits,⁸⁰
- Draft Act presented by the President of the Republic of Poland on Rules for Returning Certain Amounts Due under Credit and Loan Contracts,⁸¹
- MPs Draft Act on Special Rules for Restructuring Residential Loans in Foreign Currencies in connection with the Change in the Foreign Exchange Rates to PLN.⁸²

The first and third draft acts provide for restructuring rules for credits denominated in/indexed to foreign currencies. The second draft regulation concerned returning certain amounts due under credit and loan contracts indexed to/denominated in foreign currencies (in connection with prohibited contractual clauses providing for unrestricted specification of foreign exchange rates used for credit settlement). In 2017, a total of 5 Public Finance Commission and sub-commission meetings were held to discuss problems related to the functioning of contracts for credits indexed to/denominated in foreign currencies.

Government position on MPs Draft Act amending the Civil Code

According to the draft act, seller's liability period under warranty starts anew as of the date of replacement of a defective good with a product free from defects. UOKiK noticed that the wording "as of the date of replacement" may give rise to interpretation

⁸⁰. Print no. 729.

⁸¹. Print no. 811.

⁸². Print no. 877.

doubts as to a specific moment in time from which seller's liability period is to run anew. In practice, this wording could be detrimental to consumers and shorten the warranty period. UOKiK suggested to specify unambiguously that it is about the date of release of the said good (free from defects) to the consumer. This remark was included in the government position.

Act on Distribution of Insurance

The activities were performed on the initiative of the Minister of Development and Finance. The purpose of the draft act was **to increase the protection of customers entering into insurance contracts**. The Office made certain remarks to specify the meaning of durable medium used in the act with regard to the manner of providing consumers with information on the nature and scope of operations of an insurance agent as well as pointed to the need to specify the nature of the reference to the Act on Consumer Rights indicated in the draft act. The Office also suggested to specify the regulations for resolving insurance cases by way of out-of-court consumer dispute resolution. The UOKiK's comments were taken into consideration. The Act entered into force on 1 February 2018.⁸³

Draft Act amending the Act on Payment Services and certain other acts

Draft regulation of the Ministry of Development and Finance introduced changes in the Act on Payment Services in connection with the implementation of Directive (EU) 2015/2366 of the European Parliament and of the Council (PSD2) which repealed the regulation in this regard. New provisions also provide for **better consumer protection on the payment service**

market. The Office also noticed that the definition of "consumer" included in the draft regulation of the Ministry is unreasonable since this issue is already covered by the Civil Code. The draft regulation also referred to the system for handling complaints made by the users of payment services. UOKiK pointed out that both in the case of complaints about financial services as well as in the case of out-of-court consumer dispute resolution, the act should make references to the Polish regulations that are already applicable: the Act on Handling Complaints by Financial Market Entities and on the Financial Ombudsman and the Act on Out-of-Court Consumer Dispute Resolution. The comments made by the President of UOKiK were taken into consideration. The legislation work regarding the act was continued in 2018.

Draft Act amending the Act on Financial Market Surveillance and certain other acts

The draft regulation of the Ministry of Finance intends **to increase the security of financial market** participants by using financial services provided by various so-called internet platforms. The UOKiK's remarks concerned, inter alia, mutual exchange of information with the PFSA in connection with the performance of statutory tasks. As part of inter-ministerial consultations, the Office expressed a number of remarks resulting from an analysis of Forex risk. In terms of consumer protection in this area, UOKiK suggested to: further limit so-called financial leverage; introduce notification obligations for entrepreneurs to inform about investment risks; introduce an obligation to record phone calls used as a basis for concluding transactions;

prohibit discounts in exchange for recommending the company to new customers. The work on the draft act was continued in 2018.

Draft Act on Tourism Events and Related Tourist Services

Thanks to the UOKiK's position, the draft act was extended with a provision on a 14-day cancellation period – in case of contracts for participation in a tourist event concluded away from the business premises, without giving the reason.

Draft Act amending the Telecommunications Act and certain other acts

UOKiK pointed to the need to standardise the present provisions on withdrawal from the change in the terms and conditions of an insurance contract made by a subscriber via remote communication methods. The issue was regulated both in the present Telecommunications Act as well as in the Act on Consumer Rights. This would give rise to various interpretations of the provisions by entrepreneurs. The Ministry of Digitisation shared the UOKiK's view and crossed off any and all provisions from the Telecommunications Act that would give rise to an unsystematic enforcement of the law. The work was continued in 2018.

Draft Act amending the Aviation Act (UC 32)

In 2017, the Minister of Infrastructure proceeded with legislation work on Draft Act amending the Aviation Act by referring it to various consultation stages, i.e. to the Committee of the Council of Ministers and the European Committee. UOKiK made once again made remarks to the draft act to ensure:

- cohesion with the requirements of the ADR directive and implementing Act on Out-of-Court Consumer Dispute Resolution;
- systemic cohesion with regard to national consumer protection provisions; and
- that the level of consumer protection provided for in applicable regulations does not deteriorate.

The consultations lasted from April to July 2017. UOKiK representatives took part in, inter alia, meetings of the Working Group for Preparation of the Work of European Committee where they presented the Office's remarks to the draft act of a European nature. All the remarks expressed by UOKiK were taken into consideration by the legislator, which allows to maintain coherence between the Aviation Act and the requirements of the Out-of-Court Consumer Dispute Resolution.

Draft Act on Hereditary Management by Natural Persons

The draft regulation of the Ministry of Development (currently: the Ministry of Entrepreneurship and Technology) aimed at **regulating the legal condition of an enterprise of a natural person following his or her demise**. The presented solutions in certain areas did not take into consideration the rights of consumers resulting from applicable regulations. UOKiK made remarks about, inter alia, the issue of consumer rights resulting from regulations for warranties, guarantees, and complaints. In connection with the planned institution of a hereditary manager, UOKiK remarked that it is necessary to consider safety measures resulting from the present provisions in terms of protection of the rights of buyers of apartments or de-

tached houses. The Office representatives took part in two consultation conferences concerning the project in question and bilateral meetings on invitation of the Ministry of Development. The UOKiK's remarks were fully implemented.

Draft Act amending the Act on Conformity Assessment System, the Act on Conformity Assessment and Market Surveillance Systems, and certain other acts

UOKiK closely cooperated with the Ministry of Development (currently: the Ministry of Entrepreneurship and Technology), which is responsible for legislation issues pertaining to the market surveillance system, in order to adjust national legislation to the solutions provided for in three regulations of the European Parliament and of the Council.⁸⁴ Member States are obliged to establish an efficient control system and provisions concerning sanctions for violation by businesses of the regulations. The hardest part was to introduce the term "formal inconsistencies" into the provisions and prepare transitional provisions which would allow for efficient execution of control and legal measures by market surveillance authorities. The work on the draft regulation also took place in 1H 2018. The Sejm approved the amended act on 10 May 2018.

Draft act on market surveillance of and type-approval for internal combustion engines for non-road mobile machinery

Draft regulation of the Ministry of Development and Finance is related to the entry into force of the EU regulation concerning approval systems.⁸⁵ It dictates that Member States are required to, inter alia, establish relevant

authorities for approval and market surveillance regarding the area provided for in the regulation. Full implementation of the provisions calls for a separate act in this regard. At the beginning, the Ministry proposed that the Trade Inspection Authority should be one of the authorities to be vested with the new tasks. However, having analysed the arguments presented by UOKiK, which put an emphasis on the main purpose of the regulation, i.e. **to protect and improve the quality of air**, the Council of Ministers ultimately assigned this task to the Inspectorate for Environmental Protection. The Office also prepared provisions concerning fines. The work on the draft act was continued in 2018.

Draft act amending the Act on Fuel Quality Monitoring System and regulations on requirements for the quality of liquid fuels, methods of testing liquid fuels' quality and of collecting liquid fuels' samples

The work was carried out at request of the Minister of Economy (at present: the Minister of Energy). UOKiK expressed a number of remarks concerning the projects referring to, inter alia, definitions, division of competence, and manner of performing inspection tasks. The majority of re-

⁸³. The Act of 15 December 2017 Distribution of Insurance [Journal of Laws, 2486].

⁸⁴. Regulation of the European Parliament and of the Council (EU) 2016/424 of 9 March 2016 on cableway installations, Regulation of the European Parliament and of the Council (EU) 2016/425 of 9 March 2016 on personal protective equipment, and Regulation of the European Parliament and of the Council (EU) 2016/426 of 9 March 2016 on appliances

burning gaseous fuels.

⁸⁵. Regulation (EU) No 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC.

marks was taken into consideration, and the work was continued in 2018.

Draft amendment to the Act on Cosmetic Products

The applicant was the Minister of Health. The Act adjusts the Polish legislation with regard to administrative obligations and tasks arising from the EU regulation on cosmetic products.⁸⁶ The Office made a number of remarks concerning the competence of the Trade Inspection Authority, in particular its new tasks. These remarks were implemented in the draft act.

Act amending the Act on Packaging and Packaging Waste Management and certain other acts

The provisions of the proceeded draft act concerned, inter alia, new tasks for the Trade Inspection Authority. The remarks made by UOKiK were fully implemented. The Act entered into force on 1 January 2018.⁸⁷

Act amending the Act on Collective Water Supply and Collective Sewerage Services

UOKiK co-participated in the preparation by the Ministry of Environment of the Draft Act amending the Act on Collective Water Supply and Collective Sewerage Services. The act is a continuation of activities from 2016 (information on this subject is also contained in the Report for 2016). The majority of suggestions expressed by UOKiK at the stage of development of the bill has been taken into account. Some of them referred to the establishment of a regulatory authority and its tasks. This role was entrusted to the head of the Regional Management Board of Water State Water Management Body. The act also includes remarks concerning the procedure for approval of tariffs and

introduction of provisions for resolving disputes between water supply and sewerage enterprises and recipients. The changes include **a number of solutions which are favourable from the viewpoint of consumer interests.** The Act entered into force on 1 January 2018.⁸⁸

Enterprise Law and implementing regulations

The purpose of the act is to ensure a comprehensive regulation of general rules for business activity in Poland. UOKiK expressed many remarks to the draft act. The crucial ones concerned a principle under which the Enterprise Law would have priority over other provisions provided for under separate legislation, if the former turned out to be more favourable for entrepreneurs. The Office suggested that the clause be crossed off as it gave rise to interpretation doubts and violated the rule of appropriate legislation. It was also pointed out that the precedence of the Enterprise Law means that the interests of entrepreneurs will have priority in situations where their entrepreneurs should yield to important public interests related to, inter alia, defence, protection of consumers or of the health and life of citizens. The UOKiK's request was implemented through exclusions, e.g. with consideration of an important public interest. According to the draft act, inspection activities should be performed in essence in the presence of the person being controlled or his or her representative. At request of the Office, the exclusion catalogue was extended with inspections conducted under the Act on Competition and Consumer Protection. UOKiK was also involved in a legislation work concerning the implementing regulations to the Enterprise Law that entered into force in March 2018.⁸⁹

Draft Act of the Joint Commission of the Government and Entrepreneurs and Ombudsman for Entrepreneurs/ the Act on Ombudsman for Small and Medium-sized Enterprises⁹⁰

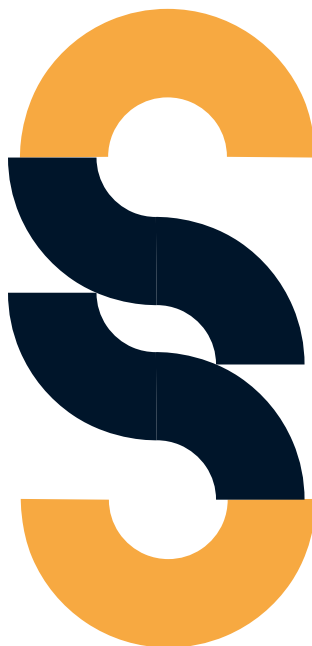
The activities were performed on the initiative of the Minister of Development and Finance. UOKiK challenged the justifiability of establishment of the commission. Entrepreneurs are professional entities which have an appropriate background and strong enough lobby in the regulatory process. In the opinion of UOKiK, the establishment of a special forum that establishes cooperation between the society and the government was not justified. The Office's view is that the proposed regulations could lead to the priority of major organisations at the cost of small entrepreneurs. Ultimately, these provisions were crossed off the draft act. Moreover, the UOKiK's remarks involving the competence and rights of the Ombudsman for Entrepreneurs (referred to at a later stage as **Ombudsman for Small and Medium-sized Enterprises**) were implemented. Those remarks concerned, inter alia, an obligation to comment on requests addressed to authorities by the Ombudsman, which in practice could be used by certain entrepreneurs to hinder administrative procedures. UOKiK was also excluded from the provision which gives the Ombudsman a very broad access to files kept by other authorities. Moreover, the Office managed to remove a solution under which the Ombudsman would be authorised to cease an inspection at an entrepreneur conducted under separate regulations. This meant that UOKiK inspections could be withheld without any limitations, which, by the same token, would make it more difficult to obtain evidence in the course of proceedings.

Draft Act on the Openness of Public Life

The purpose of the act conducted by Special Services Coordinator is **to increase the transparency of management of the state and its wealth**. The Office made remarks within the course of inter-ministerial arrangements. They referred, without limitation, to provisions concerning the disclosure of processed public information and lobbying activities in the regulatory process. Under those provisions, the President of UOKiK would be vested with powers to impose financial penalties on any entrepreneurs who do not comply with internal anti-corruption procedures or apply ostensible or inefficient procedures.

Draft Act amending the Act on Road Transport and the Act on Drivers' Working Time

UOKiK expressed its doubts as to whether the new regulation would also comprise transportation organised solely for the purpose of distribution of transportation costs. In such a case, service providers would be unable to meet the new requirements in terms of licence costs. The interpretation doubts resulted from the adopted definition of intermediation in the transport of persons. The Minister of Infrastructure and Construction assure that the regulation in question does not concern such situations. The Office also made remarks concerning situations in which service providers lose licence to transport persons and verify the carriers in this regard. At further stage, the legislator committed transportation drivers to notify the intermediary about being deprived of the licence to provide the services in question.



Draft Act on Supporting New Investments

The regulation performed on the initiative of the Minister of Development and Finance suggests **a new instrument for supporting entrepreneurs in the investment decision-making process**. The support in the form of CIT and PIT release is expected to be an incentive to invest all across Poland. The regulation was consulted with UOKiK on a working basis as the draft act and secondary legislation provided for regional investment aid. As part of inter-ministerial consultations, the Office expressed remarks aimed at adjusting the draft act to the State Aid Law, which were partially implemented. The work on the draft act was continued in 2018.

Draft Act on Providing Financial Assistance to Audiovisual Productions

The draft act on the initiative of the Minister of Culture and National Heritage provided for granting donations to producers, co-producers, and entrepreneurs providing services to the producers of audiovisual works whose production costs could be recognised eligible expenses. The financing would be provided by the Polish Audiovisual Fund. UOKiK made remarks about the transparency of rules for providing state aid, some of which were implemented. The work was continued in 2018.

Amendment to the Act on Renewable Energy Sources

The main purpose of the amendment initiated by the Ministry of Energy was to adjust the act to the EC remarks presented within the course of notification procedure. The amendment also provided for new aid mechanisms, with regard to which UOKiK presented remarks and suggested **improvements to ensure they are compliant with the EU regulations on state aid**. The work was continued in 2018.

86. Regulation (EC) no 1223/2009 of 30 November 2009 on cosmetic products.

87. Journal of Laws of 2017, item 2056.

88. The Act of 27 October 2017 amending the Act on Collective Water Supply and Collective Sewerage Services and certain other acts (Journal of Laws of 2017, item 2180).

89. The Act of 6 March 2018 – implementing regulations to the Enterprise Law and other acts concerning business activity.

90. The draft regulation initially concerned the Act of the Joint Commission of the Government and Entrepreneurs and Ombudsman for Entrepreneurs. Subsequently, the title was changed to the Draft Act on Ombudsman for Small and Medium-sized Enterprises. The Act of 6 March 2018 on Ombudsman for Small and Medium-sized Enterprises (Journal of Laws of 2018, item 648).

Draft Act on Transformation of the Right of Perpetual Usufruct of Developed Land for Housing Purposes into the Right of Ownership of Land

The draft act provided for the transformation, by virtue of law, of shares in the perpetual usufruct of land developed with multi-residential buildings, whereas the property rights would also be granted to entities conducting business activities. Up to this date, perpetual usufructuaries would receive confirmations of transformations, but in such a case they would be obliged to incur transformation fees for a period of 20 or 33 years. UOKiK expressed its remarks at the initial stage of the regulatory process that were accepted by the Ministry of Infrastructure and Construction. The work has been temporarily suspended, but they are expected to be resumed in 2018.

3.1.2 International legislation

Apart from its activity in the area of national legislation, UOKiK is actively involved in legislative initiatives in the European Union. The Office representatives prepare Government stance for EU projects and take part in EU Council working groups, where detailed provisions of draft European acts are negotiated.

Examples of UOKiK's activities concerning international legislation

Work on the Directive on Requirements for the Availability of Products and Services

In terms of market surveillance, UOKiK representatives were involved in legislation procedures concerning draft Directive of the European Parlia-

ment and of the Council on Requirements for the Availability of Products and Services. The directive is horizontal in nature, and its purpose is to **increase the availability of selected products and services for people with disabilities and functional deficiencies** (e.g. elderly people).

Amended proposal for Directive on certain aspects of contract for sale of commodities⁹¹

At the beginning, the regulation was supposed to provide for online sale only. The amended proposal also comprises suggestions of Member States as to the extension of the Directive with direct sale. Preliminary activities in the Working Group lasted until June 2017. UOKiK made its remarks about both the position of the government (accepted by the Committee on European Affairs on 15 November 2017) as well as particular institutions. The Office gives a positive view on **a pro-consumer nature of many of the suggested solutions**. However, it has doubts as to the sequential mode of consumer rights in the event of elimination of product's non-conformity with the contract. Under previous regulations, consumers were allowed to freely select their relevant measures. The new solution involves an obligatory sequence of use of the measures available to consumers, which limits the level of their protection. UOKiK emphasised the need to discuss issues pertaining to the exchange of commodities and related practices within the Working Group. The Office also expressed a number of remarks concerning the wording of particular provisions while indicating necessary specifications.

New Deal for Consumers

The European Commission conducted

a review of consumer law (Fitness Check of EU consumer and marketing law), which consists of 6 directives.⁹² The results were presented in May 2017 in the Report of the Fitness Check. UOKiK was involved in the review and took part in consultations about the directed revision of the EU consumer law and the Directive on injunctions for the protection of consumers' interests. The purpose of these activities is to evaluate the efficiency of procedural measures for the protection of collective consumer interests.

Proposal for Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws

The work on the proposal was continued in 2017. Its purpose was to **strengthen the cooperation mechanisms in the consumer protection**

⁹¹. Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council.

⁹². Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European

Parliament and of the Council; Directive 93/13/EEC of the Council of 5 April 1993 on unfair terms in consumer contracts; Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees; Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers; Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests; Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

area. The evaluation of the previous Regulation 2006/2004 proved that it is necessary to improve and modernise the regulation. The most important changes included refer to the scope of its application, introduction of new categorisation of entities and scope of their competence, and the extension of minimum competence of the competent authorities, and the introduction of new instruments. UOKiK was a leading institution on the Polish side. In consultations with the European Parliament, problematic issues concerned compensation, statute of limitations, consultations with consumers, consumer organisations, and other entities, as well as an obligation to exchange data on consumer complaints. In June 2017, a new compromised wording of the Regulation was approved at COREPER. The arrangement was made in line with the wording presented by the Presidency. The provisions of the regulation **also takes into account the many suggestions made by Poland.** So far, the proposal has been discussed at 18 meetings of the Working Group on Consumer Protection and Information. The regulation was approved in December 2017.

Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code

The draft regulation consists of a horizontal recasting of four Directives (Framework, Authorisation, Access and Universal Service). Each of the Directives contains measures applicable to electronic communications networks and to electronic communications service providers. The Code also introduces **a number of changes regarding the rights of end users.** UOKiK presented a number of remarks concerning the draft regula-

tion concerning, inter alia, the need to provide pre-contractual information on a durable medium. The work on the draft regulation was continued in 2018.

Draft Directive on certain aspects concerning contracts for the supply of digital content (Digital Content Directive)

In 2017, the Working Groups of the European Council continued to work on Digital Content Directive. UOKiK was involved in issuing opinions on subsequent versions of the draft directive and made remarks about the negotiative instructions provided by the representatives of the Ministry of Justice. It also took part in regular consultations of particular provisions of the directive. In June 2017, the work at the Council gave rise to a general acceptance of the draft directive, which brought about negotiations over the draft directive as part of three-lateral meetings of the European Directive, the European Commission, and the Council of the European Union.

Regulation on geo-blocking⁹³

The general aim of the draft regulation on geo-blocking is **to provide consumers, regardless of their nationality or place of residence or business in the EU,** with better access to goods and services in the single market. The draft regulation in particular revolved around preventing direct and indirect discrimination in cross-border e-commerce (when shopping online) as well as when travelling to other Member States to purchase goods or services. The proposal imposes, inter alia, certain obligations on traders under which they cannot, in certain circumstances, discriminate against consumers on the basis of the place of residence. The initiative focused on

situations where there is no objective reason for a different treatment of domestic and foreign customers.

According to the EC, unjustified geo-blocking and discrimination on the grounds of the place of residence is incompatible with the single market idea and contributes to the low scale of cross-border e-commerce. UOKiK actively supported the Ministry of Development (at present: the Ministry of Entrepreneurship and Technology) as part of negotiations concerning detailed provisions of the regulation. The main objective of the Office was to ensure a high level of consumer protection. The regulatory process came to an end in February 2018, with the new regulation entering into force on 3 December 2018.

Draft directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+)

The directive aims at **strengthening and harmonising the rights of consumer protection authorities of the Member States.** The directive aims to ensure that national authorities, based on the same legal basis, have relevant tools to enforce the EU competition law, which will lead to an increase in the efficiency of operations carried out by national bodies and, as a consequence, create a common ground for enforcement of the competition law. The draft directive is proceeded at the Council of the European Union and the European Parliament.

⁹³ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on

customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.



Examples of UOKiK's activities concerning preliminary proceedings

Proceedings C-176/17 Profi Credit Polska
Proceedings C-176/17 before the Court of Justice of the European Union (CJEU) were initiated by the District Court in Siemianowice Śląskie. The court delineated a preliminary question to determine whether the provisions of Directive 93/13/EEC and of Directive 2008/48/EC object to pursuing by a consumer of a claim by means of a bill of exchange in the course of an order for payment procedure under which the national court cannot examine a consumer loan contract and is restricted to examine the bill of exchange in terms of formal requirements. During the procedures on Poland's stance before the CJEU, UOKiK shared the court's doubts as to compliance of certain provisions of the Code of Civil Procedure with Directive 93/13/EEC and Directive 2008/48/EC. The Office pointed out that according to the CJEU case law, a national court is obliged ex officio to examine any unfair nature of contractual terms and conditions, as long as the court has necessary information at its disposal and regardless of whether the proceedings are simplified. In the opinion of the Office, national provisions should not prevent or make it more difficult for courts to obtain information and documents necessary to conduct such assessment. UOKiK in particular assessed that the Polish legal system features a number of situations which make it difficult, or even impossible, for courts (by lack of obligation to present the wording of a contract to the court in the case of order for payment based on a bill of exchange or accounting

3.1.3 Preliminary issues

The Office regularly monitors the case law of the Court of Justice of the European Union (CJEU). In particular, it analyses preliminary proceedings, i.e. those in which the CJEU, at request of a national court, interprets EU regulations. The Office analyses such proceedings in terms of justifiability of accession to them if a given ruling could affect the Polish judicature.

In 2017, UOKiK received

40

new preliminary issues
provided by the CJEU
on consumer-related
matters

books) to analyse the wording of a contract from the viewpoint of unfair terms and conditions and seriously hinder the concept of active protection by the consumers (by reversing the burden of proof). The problem indicated by the requesting court may, in the opinion of the Office, concern proceedings carried out in Poland in which the speed of proceedings is prioritised by the legislator, e.g. in case of simplified proceedings.

Proceedings C-51-17 Ilyés et Kiss

Preliminary inquiries presented by a Hungarian court concerned the issue of credits which tied the amount of debt with the currency exchange rate. Due to the significance of this problem from the viewpoint of Polish consumers, UOKiK recommended Poland to be involved in this procedure. The preliminary request aimed to determine:

- whether a contractual term, which has become part of the contract as a consequence of the intervention of the legislator, can be considered to be a clause which is not individually negotiated and therefore does fall within the scope of Directive 93/13 due to individual arrangements;
- whether the requirement for plain intelligible language referred to in Article 4(2) of Directive 93/13/EEC is also met if the obligation to provide information required by law has been fulfilled or is it also necessary to communicate information concerning the risk to the consumer of which the financial institution is aware or to which it might have access at the time the contract is concluded;
- whether the examination of unfair contractual term under which the consumer is subject to the currency risk (in this case, in the context of item 1 (i) and Annex to Directive 93/13/EEC which, as an example of unfair contractual clause, reads: irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract) should also take into account the

previously determined abusiveness of the provision as to the specification of currency exchange rates for the purpose of loan settlement.

In light of the above, UOKiK recommended, inter alia, present a position under which:

- contractual term which has become part of the contract as a result of legislation changes, is not an individually negotiated term;
- a national court should take into account the knowledge the borrower had that could affect the evaluation of the contractual conditions and which, nevertheless, was communicated to the consumer or was communicated in a misleading manner or the mistake resulted from concealment;
- the unfair nature of contractual provisions is also determined on the basis of other provisions of the very contract as well as all the circumstances of its conclusion (including the abusive nature of the conditions which were amended at a later stage as a result of intervention of the legislator).

The remarks coincided with Poland's position presented in the proceedings.

Procedure C-430/17 Walbusch Walter Busch

The questions asked by a German court concerned the interpretation of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (hereinafter "Directive 2011/83/EC") in terms of formal requirements for distance contracts through means of distance communication which allows limited space or time to provide the information to the consumer.

The preliminary questions asked by the German court arose due to the following status quo. A German entrepreneur on a national case

before a German court distributed an advertising brochure in the form of supplements to various magazines. The brochure consisted of six pages, with the bottom part consisting of a cuttable order postcard. The postcard provided information on consumer's right to withdraw from the contract. In addition, the postcard also contained contact data of the entrepreneur as well as the website. The entrepreneur used the website to provide detailed information on withdrawal from the contract and also released a withdrawal form.

This activity was challenged by the Central Agency for Combating Unfair Competition (the complainant in the national case before a German Court). According to the complainant, the brochure should contain information on any and all conditions, time limit, and procedures for exercising the right to withdraw from the contract and contain a withdrawal form.

As a result, the German court asked the following questions:

1. With regard to Art. 8 (4) of Directive 2011/83/EU, for the issue whether a means of distance communication (in this case, an advertising brochure with an order form) allows limited space or time to display the information, does it matter that:

a) a given means of distance communication (in principle) allows limited space or time in line with its nature,

or is it rather that

b) a given means of distance communication, specifically due to the shape chosen by the entrepreneur, offers only limited space or time?

2. In the event of limited possibility of presenting information within the meaning of Art. 8 (4) of Directive 2011/83/EU, is the limitation of information on the right to withdraw from the contract only to information on the right to withdraw from the contract compliant with Art. 8 (4) and Art. 6 (1)(h) of Directive 2011/83/EU?

3. Is it always required, under Art. 8 (4) and Art. 6 (1)(h) of Directive 2011/83/EU, also in the event of limited possibility of presenting information,

to attach before the conclusion of a distance contract the model withdrawal form contained in Annex I(B) of Directive 2011/83/EU to the means of distance communication?

UOKiK recommended to, inter alia, present a position under which:

- an advertising brochure, as the one in question, has limited space to provide information. Nevertheless, this limitation lies with the entrepreneur. The entrepreneur makes decisions on the size of the brochure, distribution, and amount of information. Therefore, this is not a limitation within the meaning of Art. 8 (4) of Directive 2011/83/EU;
- Art. 8 (4) is not only restricted to the requirement for providing information about the right to withdraw from the contract, but also points to (h): where the presentation of information is limited within the meaning of Art. 8 (4) of Directive 2011/83/EU, the entrepreneur is obliged to present all the information referred to in item (h). The purpose of this provision is to guarantee that consumers are provided with mandatory information. Providing selective information only on the right to withdraw from the contract, without information on the conditions, time limit, and procedures for exercising this right, does not meet the conditions of consumer right to information;
- consumers, apart from the information on the right to withdraw from the contract, should also receive a model withdrawal form. According to Art. 6(1)(h) of Directive 2011/83/EU, before a consumer is bound with a distance contract or off-premises contract, or any other offer in this regard, the trader should give the consumer clear and comprehensible information as well as the model withdrawal form set out in Annex I(B). In connection with the fact that Art. 8 (4) of Directive 2011/83/EU does not limit the information to be provided by the trader to the consumer to the sole information on consumer's right to withdraw from the contract and refers to, Art. 6(1)(h), it is assumed that the trader should also provide the model withdrawal form in case they use a means of distance communi-

cation providing for limited space/time.

The presented remarks were resembled in Poland's position presented in the proceedings.

Proceedings C-486/16 Bankia

The proceedings concerned the enforcement of a mortgage loan based on an unfair term included in a mortgage loan agreement providing for early payment in the event of a specific default on regular instalments. In the status quo, which was a result of preliminary questions asked by a Spanish court, the basis was the mortgage loan agreement concluded between a bank and a couple of consumers in 2006 in the form of notarial deed. In line with the condition imposed by the bank, a default on at least one of the instalments would allow the bank to immediately call for early repayment. As early as in the year in which the loan agreement was concluded, the borrowers, upon bank's consent, distributed the loan repayment schedule into two tranches, which lead to a situation where the loan was repaid in two ways, based on two schedules, but still under the one and only agreement containing a clause that the bank is entitled to call for early repayment in the event of even the smallest default on regular instalments.

The national court had doubts as to the results of the prejudicial recognition of the prohibited nature of a given clause on other matters concerning that contract, the same parties to the agreement, the same clause, but other temporal circumstances of invoking, which may reduce or repeal its abusive nature. The court asked whether such interpretation is compliant with the principle of effectiveness as defined in Art. 7 (1) of Directive 93/13/EEC on unfair terms in consumer contracts.

By analysing the case whether it is justifiable to join the Government of the Republic of Poland to the proceedings, UOKiK analysed whether the very same clause in the very same agreement binding on the very same parties could be considered abusive or prohibited, depend-

ing on the temporal circumstances of invoking. UOKiK found that the issue may appear only in the event of incidental control of template agreements because it does not matter during an abstract control whether the clause has legal effects or whether the agreements concluded with consumers contained the prohibited clause in the first place. The wording of a given clause in such a case is analysed in abstract terms, separately from a specific correlation with a different agreement that has already been concluded and performed, although taking into account the measurements referred to in Art. 385 (2) of the Polish Civil Code. As for a specific control, which took place in the status quo being the basis for preliminary questions, the abusive nature of the clause "is manifested" within the term of a specific agreement, and the question arises whether the evaluation of the charged based on the impugned clause is affected by the time of such evaluation.

In conclusions, UOKiK found that the ruling of the Tribunal concerning the matter may have a significant impact on the interpretation of provisions concerning prohibited contract terms and the judicature of Polish courts, which is why the Office considered it necessary to present its remarks in writing. These remarks were, however, not communicated to the Tribunal. The case is pending, and there was still no judgement passed as at the end of 2017.

3.2

Social surveys and market analyses

Market studies comprise an important element of UOKiK's activity.⁹⁴ For the Office, these are sources of information the nature of a given sector, in particular the level of competition and concentration. Markets are most often monitored where there is a greater likelihood of practices threatening the development of competition.

Market studies and analyses

The studies are conducted in the form of surveys addressed to entrepreneurs operating in a given sector, they **can be national or local**. The information obtained is also used in cases concerning infringements of competition laws. Market studies are also used to analyse economical phenomena which affect consumer interests. In 2017, UOKiK instigated 7 new market study proceedings. 4 proceedings were terminated, one of them in 2017 concerned agricultural and food products market.

Separate studies were conducted in the context of proceedings in concentration cases. They served the purpose of a direct analysis of the impact of planned concentrations on the market.

Also in case of consumer, certain explanatory proceedings are in the form of market study (monitoring). Moreover, UOKiK carries out various analyses to assess e.g. the harmfulness of action conducted by entrepreneurs and apply corresponding solutions through its decisions.

A study of agricultural and food products market

The study was conducted in 2017 in connection with the entry into force of the Act on Counteracting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products. The purpose of the activities was **to estimate the potential number of complaints to entrepreneurs' activities** that could be filed with UOKiK once the new regulations. As a result, it was necessary to determine the number of chain store suppliers and of agricultural and food products manufacturers. The study also aimed at obtaining information outlining the organisation of the acquisition process for agricultural and food products by chain stores and the manufacturers of those products.

According to the data obtained from the largest chain stores, in 2016 these stores held over 17 thousand suppliers which provided agricultural and food products valued at over PLN 50 thousand (this is the statutory amount which calls for UOKiK's intervention). In the years 2015-2016, the total number of all chain store suppliers (with-

In 2017, UOKiK instigated



new market study
proceedings

out the purchase value threshold) amounted to over 23 thousand. As for the surveyed (largest) agricultural and food product manufacturers, in 2016 there were slightly over 31 thousand suppliers which provided their products valued at over PLN 50 thousand. In total, chain stores and agricultural and food product manufacturers had 48 thousand suppliers whose purchase value exceeded PLN 50 thousand. It should be emphasised, however, that the numbers resulted from the adopted data aggregation method, i.e. adding the number of suppliers of all the entities subject to examination. This means that a given supplier in that number could be counted more than once due to the fact that the supplier in question provides its products to a number of recipients.

Social surveys

Social surveys commissioned by UOKiK concern are a source of intelligence on the level of knowledge of

⁹⁴. UOKiK may conduct investigations as a market study.

selected legal issues, consumer attitudes, and the level of confidence and security of consumers in particular markets. Their results are important for information and educational actions and to facilitate cooperation with stakeholders. In 2017, UOKiK conducted 2 social surveys.

Awareness of amicable dispute resolution in consumer cases (ADR)

A two-stage survey was carried out in connection with a campaign on amicable dispute resolution (ADR) in consumer cases. The first stage was preceded by an information campaign (carried out as early as in 2016), with the second stage being conducted after its completion – in November 2017.⁹⁵ The results of the surveys showed that **social awareness of ADR increased moderately**. In 2016, 31% of respondents (a representative sample) stated that they were aware of this solution, whereas this rate amounted to 38% after the campaign. The awareness of amicable dispute resolution turned out to be higher among persons who filed complaints (41%). At the same time, the respondents declared that they have low knowledge in this regard. Therefore, the campaign brought about an increase in the awareness of amicable dispute resolution – it penetrated social awareness, but often only as a term.

⁹⁵ The survey was carried out by Research Institute ARC Rynek i Opinia on the order of UOKiK in November 2017. The survey was carried out by the CAWI (Computer Assisted Web Interview) method using the agency's own panel at epanel.pl. The representative sample comprised N = 1000 Poles

aged 15-55 years. Also, additional interviews were conducted with persons who filed a complaint during the last 24 months, N = 506 people, 283 of which are included in the main sample.

⁹⁶ The project is valued at PLN 679,689, with the EU contribution amounting to PLN 572,841.89.

3.3 Information and educational activities

Information and educational activities conducted by UOKiK revolve around legal and economic issues. Education projects, events, and competitions are conducted every year. The Office is also involved in publishing activities.

The website www.uokik.gov.pl, in addition to news, offers information on consumer warnings, notification from entrepreneurs about unsafe products, map of fuel stations and warehouses with inspection results. It also contains a consumer support browser. Moreover, UOKiK runs online platforms dedicated to specific issues.

The Office website also offers the Public Information Bulletin (BIP). In 2017, **1182 requests for public information** were submitted to UOKiK, which is nearly 67% more than in the previous year.

Information and educational projects

“Knowledgeable Contracting Authority – Competition Law in Public Procurement Tenders”

In 2017, UOKiK carried out the project “Knowledgeable Contracting Authority – Competition Law in Public Procurement Tenders” financed by the European Social Fund (Operational Programme Knowledge Education Development 2014–2020).⁹⁶ The Office organised 32 free-of-charge trainings for the employees of central and local

The Office organised



**free-of-charge trainings
for the employees
of central and local
government administration
all across Poland**

government administration all across Poland. The trainings were conducted in September, October and November and they were participated by **1362 people**.

The project gave rise to a new e-learning platform **www.szkolenia-zmowy.uokik.gov.pl** devoted to tender collusion – methods of their discovery and counteracting. In 2017, nearly **one thousand people** created an account



RESOLVE A DISPUTE:

- FAST
- EASILY
- WITHOUT BUREAUCRACY

polub
polubowne 

on the platform. Online trainings will be available until June 2020.

Campaign "Make friends with arbitration!"

In connection with the entry into force of the Act on Out-of-Court Consumer Dispute Resolution on 10 January 2017, the Office conducted an online social campaign. It comprised spots encouraging to visit www.polubowne.uokik.gov.pl. The website contains a browser of institutions authorised to resolve disputes, infographics with course of action, FAQ, and a flyer. The campaign was conducted from 18 September to 18 October 2017 under the motto "Make friends with arbitration!". There were nearly 67 thousand unique visits on the website in 2017.

Events and Competitions

The conference "Consumer Protection in the Age of a Rising Silver Economy"

On 10 March 2017, UOKiK, in cooperation with the Senate Team for Consumer Protection and the Cardinal Stefan Wyszyński University, held a conference on the occasion

Examples of initiatives in cooperation with other institutions in 2017

The 8th edition of the campaign: "Things to remember before holidays". On UOKiK's initiative, 40 institutions reminded consumers about their rights during summer holidays.

UOKiK (including the Branch Office in Łódź), in cooperation with the Archdiocese of Łódź, warned seniors against unfair practices applied by entrepreneurs. Posters about the threats were displayed in several hundred churches.

UOKiK, the Office, and the Financial Ombudsman engaged in a joint initiative to warn consumers against investing in Forex. Moreover, the Office warned against investments which can take the form of pyramid schemes.

"Safe Playrooms". UOKiK, the Trade Inspection Authority, and the Ombudsman for Children have jointly prepared recommendations for parents and entrepreneurs on how to ensure the safety of children.

of World Consumer Rights Day. The event was addressed to the elderly who are a particularly vulnerable consumer group. The participants discussed unfair practices as well as efficient solutions for the protection of the elderly.

The World Consumer Day was also an opportunity to award consumer-friendly entrepreneurs. **UOKiK and the Senate Team for Consumer Protection have awarded for the first time**

the title of **Amicus Consumendum** to those entrepreneurs who promoted the idea of amicable dispute resolution. The prize-winners of the competition were three enterprises from the Zachodniopomorskie Province.

Workshops – Economy in the competition law

UOKiK, in cooperation with Compass Lexecon and the Competition Law Association, organised in 2017 a series of workshops on economy in the competition law. The invitations were sent to judges, lawyers, entrepreneurs, and academics. **Three meetings** were held: in February, April, and October.

The first workshop was devoted to an economic approach in cases pertaining to the competition law. The second one dealt with private enforcement directive and the possibility of pursuing claims due to violation of the competition law as economy methods used in estimating losses resulting from the infringement of competition. The third event revolved around legal issues with regard to counteracting the unfair use of contractual advantage in the trade in agricultural and food products.

Information meeting – contractual advantage

In July 2017, the Act on Counteracting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products entered into force. As a result, UOKiK held an information meeting for entrepreneurs to outline new legal instruments and competence of the Office. The workshop was participated by representatives of the organisations involved in social consultations regarding the act. The course of the meeting was transmit-

ted online, with the recording being available on the UOKiK website.

Workshops for entrepreneurs – market surveillance

In June, UOKiK organised a training **for entrepreneurs dealing with trade in electronics**. The meeting was devoted to market surveillance in this area as well as changes in the law. By contrast, the workshop in September was devoted to **entities dealing with clothing, furniture, toy, home appliance, and electronic industries**. The subject of discussions pertains to regulations concerning market control and surveillance as well as the irregularities in selected areas. In November, there was a training devoted to the EU law regarding the limitation of certain hazardous substances in electric and electronic equipment ("RoHS").

Workshop: "State aid – recent legal condition and issues pertaining to the subject"

The November workshop was participated by over **150 experts** from central and regional institutions, mainly involved in protection of the environment and energy. It provided for the transfer of information on the new regulations as well as the networking of various institutions involved in providing state aid.

Trainings for Trade Inspection Authority Officers

The main purpose of the meetings with inspectors organised by the Office is to ensure the unification of inspection practices. In 2017, some of the inspections concerned non-food products, LPG, and liquid fuels as well as issues pertaining to the energy law.

Contest for the best MA thesis

Since 2008 and 2011, UOKiK organ-

ises contests for the best MA thesis in competition protection and consumer protection, respectively. Since 2015, the Office also carries out a contest for the best PhD thesis which takes place every 3 years. Any person graduated in Law and other domains, including economy, administration, and management, is allowed to take part in the contest. In 2017, **UOKiK awarded 6 MA theses, and distinguished 6 MA theses.**

Wielkopolska Consumer Knowledge Olympiad

2017 was marked by the 12th edition of the Elżbieta Potczyńska Wielkopolska Consumer Knowledge Olympiad. The event was organised by the Branch Office of UOKiK in Poznań in cooperation with the local governments of the Wielkopolskie Province, Wielkopolskie Branches of the Consumer Federation, Wielkopolskie Province Trade Inspector, District and Municipal Consumer Ombudsmen, and the Districts of the Wielkopolskie Province. The event was held under the patronage of the President of UOKiK and Marshal of the Wielkopolskie Province. **Over 500 students of upper secondary schools from 16 districts of the Province competed for the prizes.**

Publishing activities

As part of information and educational activities, UOKiK prepares, publishes, and distributes publishing items.

In 2017, the Office paid particular attention to educating consumers and entrepreneurs in out-of-court consumer dispute resolution. Under the campaign "Make friends with arbitration!", the Office prepared and printed a publication devoted to this subject.

UOKiK activities in numbers – 2017

1182

requests for BIP response
(1173 considered positively)

3

new, thematic
news websites
(87,420 unique
visits in total)

32

on-site trainings
in tender
collusion
(1362 people
trained)

Moreover, the Office prepared and release **the flyer "Consumer Aid"** which provides information on how consumers are able to exercise their rights and where they can seek help. Another one is a flyer called **"Unfair Contractual Clauses"**, which was printed by UOKiK in 2017.

In connection with the promotion of leniency and leniency plus programmes, the Office issued **an electronic version of the publication** "Explanations of the President of the Office of Competition and Consumer Protection on the Leniency Programme. The manner of submitting and handling applications for waiver from or reduction of fine – leniency applications".

All publications are posted at www.uokik.gov.pl, which also provides an electronic version and allows to order a free-of-charge delivery of the document in paper form.

Online platforms

In April 2017, the Office started an information anti-trust law website **www.konkurencja.uokik.gov.pl**. The website comprises major issues related to the activities undertaken by UOKiK to counteract competition-restricting practices, including leniency programme and protection of whistleblowers. In 2017, there were over 14,400 unique visits on the website.

The website **www.przewagakontraktowa.uokik.gov.pl** was launched in June 2017. It pertains to counteracting the unfair use of contractual advantage in trade in agricultural and food products. It explains how UOKiK counteracts such unfair trade practices in the form of questions, answers, and infographics. It also contains a recording an information meeting with entrepreneurs. In 2017, there were 6,400 unique visits on the website.

The Office updates **www.finance.uokik.gov.pl**, a website maintained since 2015, which offers comprehensive information on the situation on the market of mortgage loans denominated in Swiss franc and the unit-linked insurance market. The website contains information on activities performed by UOKiK – proceedings, decisions, reasoned opinions, and judicial decisions. In 2017, there were 88,650 unique visits on the website.

Cooperation with the media

UOKiK regularly provides information on its activities as part of regular press releases sent to the media and published on the Office website.

Over half of the messages in 2017 concerned consumer protection, with every third pertaining to the control of concentration. UOKiK is also active on Twitter.

In 2017, the cooperation with Polskie Radio 24 was continued as part of weekly auditions – **Consumer Alert**.

Moreover, in 2017 the information campaign for the prices of water at airports enjoyed a considerable interest from the media. The Office used press releases and its Twitter account to provide information about its request sent to Polish airports concerning the high **prices of water in the duty-free zone**. Thanks to the UOKiK campaign, there are now free-of-charge drinking water intakes offered at the Chopin Airport in Warsaw. Another issue which is often raised by the media concerns UOKiK information activities with regard to **increases in butter prices**. UOKiK regularly notified the media about explanatory proceedings on this matter.

UOKiK for the media

187 **337**
press releases tweets
(955 thousand views)

3
press conferences

The media about UOKiK

4068
press articles

32 732
online publications

3248
radio and TV materials

3491
mentions about UOKiK on Twitter

3.4 International cooperation

An important aspect of UOKiK's activities is cooperation with other national authorities and international organisations involved in competition and consumer protection both in the horizontal perspective and within the narrower market sectors.

As a Member State of the European Union, Poland participates in the EU decision-making process and works closely with other Member States and the institutions of the European Union. UOKiK is actively involved in working groups, e.g. by creating EU legal norms.

3.4.1 Cooperation for consumer protection

Consumer Policy Network – CPN

CPN meetings, organised by the EC twice a year, provide a platform for EU consumer protection authorities to exchange experiences on the most up-to-date horizontal issues regarding consumer protection, both at national and EU level.

The meetings organised in 2017, which were participated by a UOKiK representative, were devoted to **current EU initiatives**, i.e. the new CPC regulation, draft regulation on e-privacy, revision of the consumer law, and Clean Energy for All Europeans. Major subjects

were: consumer complaint database, survey for co-sharing economy, and labour organisation within the network. The CPN meeting was for the first time combined with Consumer Markets Expert Group which discussed, inter alia, Consumer Conditions Scoreboard as well as studies conducted by the EC.

European Competition Day

UOKiK representatives took part in conference of the European Consumer Days organised by the Presidency of Malta and Estonia at the Council of the European Union. The meeting on Malta, whose leitmotif was **a Digital Single Market Strategy**, focused on issues related to consumer protection in electronic communication, sharing economy, the regulation on geo-blocking on fintech market, and smart mobility. The event organised by Estonia pertained to changes occurred in competition and consumer protection in the last years and mainly related to **the so-called Third Wave** of the Internet as well as rapidly growing digital economy, new business models, and a new consumer type.

Consumer Financial Programme Committee (CFPC)

The European Commission sets annual plans for the implementation of consumer policies as part of Multiannual Consumer Programme for the years 2014-2020.⁹⁷ These plans are subject to opinions at the Consumer Financial Programme Committee. This is an advisory committee composed of representatives from all EU Member States. In 2017, UOKiK representatives took part in a committee meeting devoted to the implementation of the plan from 2017. The session also allowed to summarise and evaluate the financial programme from the years 2007-2013 as well as mid-term evaluation of the current programme.

Meeting of the representatives of ODR contact points and European Consumer Centres

UOKiK's representatives took part in the meeting of representatives of the ODR contact (Online Dispute Resolution) points and the European Consumer Centres (ECCs).

The meetings of the ODR contact points organised by the European Commission serve an exchange of experience on the efficiency of the ODR system in EU Member States. During the meeting in 2017, the experience

⁹⁷ Regulation of the European Parliament and of the Council of 26 February 2014 on a multiannual

consumer programme for the years 2014-2020 and repealing Decision No 1926/2006/EC.

of specific countries concerning the ODR system were presented, including communication with its users. The EC informed about scheduled information campaigns – for entrepreneurs and consumers, and presented initial statistical data on the functioning of the platform since its start-up.

The meeting of the Heads of ECCs was devoted to exchange national experience. The EC presented a new edition of ECC-NET – IT Tool and outlined priority areas in consumer law: **REFIT Fitness Check, collective redress, the European Small Claims Procedure.**

International Consumer Protection and Enforcement Network (ICPEN)

ICPEN is an organisation that brings together consumer protection authorities from **over 60 countries**. The mission of the Network is to exchange information on cross-border market practices that may have a negative impact on consumer interests, and to promote cooperation between the authorities responsible for implementing consumer legislation.

In 2017, the President of UOKiK took part in a High Level Meeting organised by German Presidency of ICPEN. The event was devoted to strengthening the cooperation between various organisations, in particular how to conduct joint activities as part of ICPEN and regulations in a digital world. Moreover, the discussions focused on the course of action of the network for the years to follow and a new version of the ICPEN website.

UOKiK representatives were also involved in workshops and conferences organised by the ICPEN Presidency of Germany and Turkey which were

devoted to **challenges in the enforcement of competition protection law in a digital world** (with particular focus on a growing importance of matters pertaining to entrepreneurs' interference in consumer privacy and an increasing role of marketing in the social media) as well as the need for improving cooperation with the counterparties of entrepreneurs that resort to violations or other entities which (unintentionally) may facilitate such violations (social media, payment service providers). One of the subjects comprised making joint action as part of the network and the need for better cooperation between institutions in charge of consumer protection and personal data protection.

The Office also took part in the annual ICPEN Internet Sweep, with the 2017 edition being devoted to the Terms and Conditions in the Digital Economy. Out of 87 websites subject to examination, 13 websites featured irregularities concerning, inter alia, an automatic subscription prolongation, non-returnable fees following contract termination or excessively long terms and conditions which are not understandable for an average consumer.

OECD Consumer Policy Committee

UOKiK monitors the work of the OECD Consumer Policy Committee, which brings together representatives of consumer protection authorities in Member States, experts from social organisations, and entrepreneurs. In 2017, the Committee's work focused on issues of electronic commerce, consumer protection in the online platform environment, challenges in the safety of products related to the development of the Internet of Things, the security and protection of data on

consumers, and a wider use of a behavioural approach to protecting vulnerable market participants.

International cooperation in market surveillance and product safety

UOKiK took part in meetings of the Working Group dealing with "Market Surveillance Action for Tyres 2015" (MSTyr15) coordinated by PROSAFE. The programme was participated by market surveillance **authorities from 15 Member States of the European Union and Turkey**. One of the underlying assumptions was to exchange information between market surveillance authorities with regard to inspection of labelling, inspection of technical documentation, and lab tests.

The meeting between the customs authorities of the Baltic states and market surveillance authorities in Riga aimed at discussing a common inspection project aimed at **preventing any goods non-compliant with the applicable regulations or posing a threat to users from entering the EU market**. Scheduled to be implemented in 2018, the project is supposed to cover six product groups, e.g. electrical equipment and gas fuel burning devices.

In 2017, the international Joint Action 2014 was concluded, which was the largest trans-border project in market surveillance coordinated by PROSAFE (a non-profit organisation). As part of the project, **the safety of pyrotechnic articles and electrotools** (angle grinders) were examined and inspected. In addition, the EEPLI-ANT 2014 project (Energy Efficiency Complaint Products 2014) has been implemented. The project consisted



in a **laboratory examination of light sources** offered on the Polish market. Moreover, the Office proceeded with the international project Joint Action 2015 which pertains to inspections and laboratory examination of **plastic toys** (with a verification of chemical properties – the presence of prohibited chemical substances) and initiated another international project Joint Action 2016 which will aim at inspection and laboratory testing of the **safety of hair treatment devices, electronic toys, and percussion drills**.

UOKiK was involved in the Exchange of Officials Programme in the area of market surveillance and safety of non-food products financed by the Eu-

ropean Commission. In 2017, the Office hosted the representatives from Malta, Bulgaria, and Germany. UOKiK representatives were able to familiarise themselves with the duties of their counterparts from France, Portugal, Bulgaria, Croatia, and Malta.

In 2017, the President of UOKiK visited the VDE Testing and Certification Institute – Association of Electronics Technicians, Electronic Engineers, and IT Specialists seated in Offenbach. The Office proceeds with cooperation with VDE, which was initiated in 2005 by the Chief Trade Inspection Authority Inspectorate. Due to the fact that UOKiK does not have a laboratory for testing electric products, professional

counselling provided by VDE is crucial. The meeting was an opportunity to exchange experience and **discuss possible cooperation with the VDE chemical labs as well as purposeful aging of products, double quality of products, and smart home technologies**, with particular focus on the safety of devices remotely controlled via mobile applications or that can be automatically (without user being aware of the fact) connected via WiFi to various databases, servers, etc. and provide data. VDE shared its experience as regards disassembly of samples and lab equipment used for designating prohibited substances.

3.4.2

Cooperation for competition protection

Council of the European Union

In 2017, a UOKiK representative took part in the Working Party on Competition (G.12). The discussions focused on draft directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be **more effective enforcers and to ensure the proper functioning of the internal market (ECN+)**.

They also took part in the Transparency Steering Group. The group prepares EC guidelines for data registration in the TAM system. The purpose is to help Member States comply with the obligation to publish on one website relevant information on the highest aid granted in terms of volume. Within the course of work, the participants suggest changes in system features and user management. All elements of the report were also discussed at the meetings. As it is not required by law to accede to the TAM system, Poland (as at this date) does not belong to the system. UOKiK administrates the national website for Electronic State Aid Information System (SUDOP).

UOKiK also took part in the Member States' Working Group on Implementation of State Aid Modernisation. It is a regular platform for exchanging information and experience on the implementation of the reform, including monitoring of support in particular countries as well as state aid provisions in European Funds. **3 meetings** were held in 2017. One of them was hosted by Poland. The work of the

group is summarised and approved during at the High Level Forum, which is participated by UOKiK representatives. These are political meetings organised by the European Commission with senior representatives of the Member States. They are informative and consultative in the scope of implementation of the reform and its subsequent stages.

European Competition Network – ECN

In 2017, a UOKiK representative took part in the Cooperation Issues and Due Process Working Group. The purpose of the meetings was to present the progress in ECN+ directive. The participants also discussed procedures for cooperation between anti-trust authorities and the European Commission. Moreover, the Office Management took part in the annual DGs meetings, which aim to develop **a coherent and effective European competition policy**. The main subjects involved: the progress in a directive aimed at increasing the competence of anti-trust authorities in the EU, mutual relations between investigatory powers and the right to privacy, implementation of Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions, enforcement of the EU prohibition of making any illicit arrangements in the agricultural and food sector (Art. 101 of the TFEU).

Another important tool which enables the flow of knowledge and experience within the ECN consists in informal inquiries that may be sent by anti-trust authorities. In 2017, UOKiK prepared responses to 41 inquiries. The Office itself issued 5 inquiries to ECN mem-

bers that were used in anti-trust proceedings.

European Competition Authorities – ECA

The management of UOKiK participates in annual meetings of Heads of the European anti-trust authorities. At these meetings, representatives of individual competition authorities present, among others, the latest results of their work. In 2017, the meeting was held in Berlin. The participants talked about the significance of consumer interests in the course of pending anti-trust proceedings as well as the enforcement of the competition law in the agricultural and food industry as part of the food supply chain.

Organisation for Economic Cooperation and Development – OECD

UOKiK representatives took part in an OECD meeting in Paris – Global Forum on Competition and a meeting of the Working Group Cooperation and Enforcement that aimed at discussing efficient procedures for detection of cartels.

International Competition Network – ICN

The network is a platform for cooperation and exchange of experience of more than **130 competition authorities from around the world**. Representatives of the Office took part in an annual ICN meeting held in Portugal. In 2017, **the Office received the World Bank and International Competition Network award for the best information and educational project in the field of protection of competition in the Implementing advocacy strategies at multiple levels**.



The winning project was the UOKiK's publication on water and sanitation services market.

Other events

In March 2017, UOKiK hosted High Level meetings involving the Directorate General for Competition (so-called Country visit). DG COMP delegation, supervised by the Head of State Aid in the Directorate for Markets and cases I: Energy and Environment, took part in meetings involving 5 ministries, including the Ministry of Finance and the Ministry of Development. The meetings concerned state aid subject to notification or pre-notification to the European Commission and better cooperation in this regard. Major subjects concerned aid in the energy industry, restructuring of the coal industry, aid granted to airports

and carriers, as well as public broadcasters.

The President of UOKiK took part in the annual Baltic Competition Conference. In 2017, the meeting was held in Vilnius. The participants discussed the issue of the new ECN+ directive, cooperation between competition protection authorities, procurement and competition laws, market studies, and competition law in the sector of reception and management of municipal waste. Moreover, the President of UOKiK took part in the conference Competition Policy: Contemporary Trends and Challenges organised by an institution in charge of competition protection affairs in Georgia. The subjects discussed at the conference pertained to, inter alia, **the relationship between state aid**

and the guarantee of competition protection. There were also remarks about international obligations regarding such protection. The talks revolved around exchange of experience between competition protection units and priorities for further action. The President of UOKiK was also involved in a conference organised on the occasion of the 20th anniversary of the competition protection authority in Turkey which dealt with the issue of economy in the anti-trust law. Moreover, the President was also involved in a conference organised on the occasion of the 25th anniversary of the introduction of competition policies in this country. The participants talked about, inter alia, leniency programme, state aid, and issues related to abuse of a dominant position.

Postscript

In 2018, UOKiK will continue to focus on detecting the most grievous infringements of the competition law: cartels. For this end, the Office plans to conduct a number of searches, which constitute an efficient measure in obtaining evidence in secret arrangements that do not leave behind any direct evidence. Moreover, the Office will examine vertical agreements, including those covering the entire country.

Counteracting one of the most harmful arrangements, i.e. tender collusion, will be accompanied by information and educational initiatives, permanent monitoring of public tenders, as well as a regular analysis of agreements. **The protection of markets against tender collusion**, i.e. discovering and preventing such collusions from taking place – continues to be one of the top strategic objectives of UOKiK.

The Office also plans **to develop a whistleblower programme** which allows to notify anonymously about practices restricting competition. Civil sources of information are extremely valuable, what is more, the data obtained in such a way contribute to detecting illegal activities in Poland.

The plans of the Office of Competition and Consumer Protection for 2018 also include **the practical application of the mystery shopping method**,⁹⁸ which aims to obtain information which

may constitute evidence in cases pertaining to practices that violate collective consumer interests. The above shall enable the identification of any possible anti-consumer phenomena on the markets on an on-going basis, prompt intervention, and improvement of the evidence standards.

One of the Office's priorities will be the **effective enforcement of consumer law in the financial services market**, in particular as regards foreign currency loans, insurances issued by insurance capital funds, and alternative investments. The **fight against unfair practices in direct selling market** (away from the business premises) shall also remain an important issue. The Office's activities in this area shall include: sovereign acts, legislative works, stimulation of self-regulatory processes, as well as information and awareness-raising activities. UOKiK also plans **to amend the Development Act**, which shall increase further the level of consumer protection.

In 2018, the Office intends to strengthen its cooperation with consumer rights advisers and community-based organisations as regards the management of consumer signals. Moreover, UOKiK shall promote the cooperation with customs and treasury authorities within the framework of the market surveillance and general product safety system. It shall also be important to prepare the Trade Inspection to carry out tasks related to the control of solid fuels (coal).

UOKiK plans in 2018 are inextricably linked to **optimising processes within the Office** and increasing the efficiency of its activities. One of the key aspects will be, therefore, the development of an IT network, including major work on the implementation of an electronic system for document management.

⁹⁸ Art. 61a of the ACCP.

Organisational structure and division of responsibilities

as at 31 December 2017

