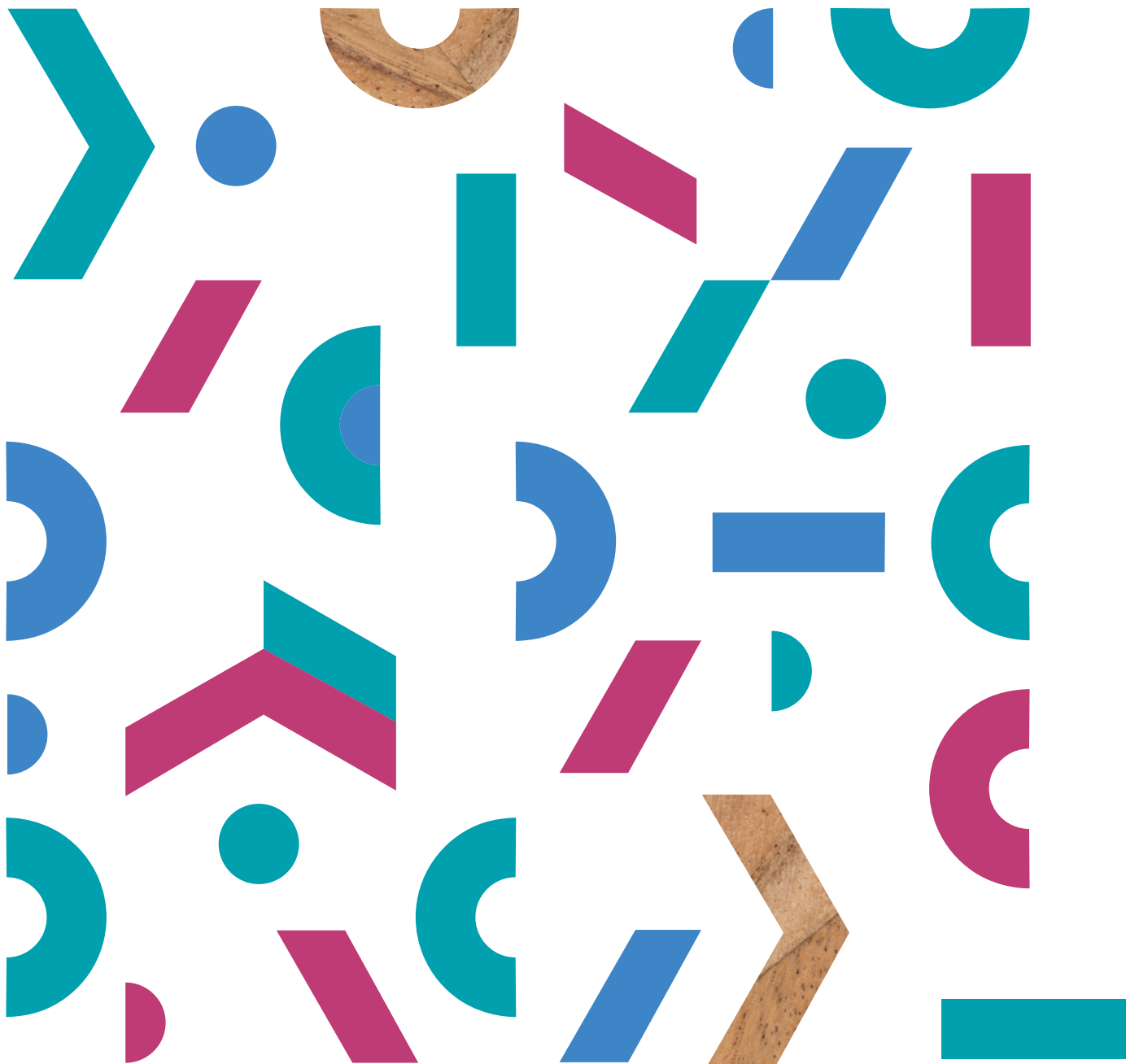




Office of Competition and Consumer Protection

Report on UOKiK activities in **2018**



Report on UOKiK activities **in 2018**



Urząd Ochrony Konkurencji i Konsumentów

Warsaw 2019



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UOKiK – Key information

About UOKiK

The President of the Office of Competition and Consumer Protection is a central governmental authority. The scope of its powers is specified in the Act on competition and consumer protection of 16 February 2007.¹ The activities of the authority are financed from the state budget.²

UOKiK's mission

is to act for the highest possible level of consumer welfare through effective protection of consumers' interests and rights while respecting the principles of procedural fairness in relationships with entrepreneurs.

Management

President of UOKiK

Marek Niechciat

Vice President of UOKiK

Michał Holeksa

Vice President of UOKiK

Dorota Karczewska
(served in the function
until 10 June 2019)

Director General

Maciej Jabłoński

UOKiK's tasks include

1.
preventing the irregularities in
functioning and development of
the competition and eliminating
them

2.
protecting
the collective
consumer
interests

3.
controlling
mergers and
acquisitions

4.
monitoring
state aid

5.
ensuring product safety and
supervising the market of non-food
products, agricultural products and
foodstuffs with regard to quality

6.
participating in the legislation process
in order to create a legal environment
stimulating the development of
competition that effectively protects
consumer interests

¹ Act on competition and consumer protection of 16 February 2007 (Journal of Laws, 2007, item 369), hereinafter called: "UOKiK act".

² In 2018, UOKiK also delivered on activities financed from EU funds.

UOKiK in numbers – 2018

765

PLN mn – BUDGET

489

EMPLOYEES, including:*

185
lawyers

28
food technologists

69
economists

9
biotechnologists

39
chemists

* professions represented most often

890

DECISIONS, including:

240
in competition
protection area

650
in consumer
protection area

19.1

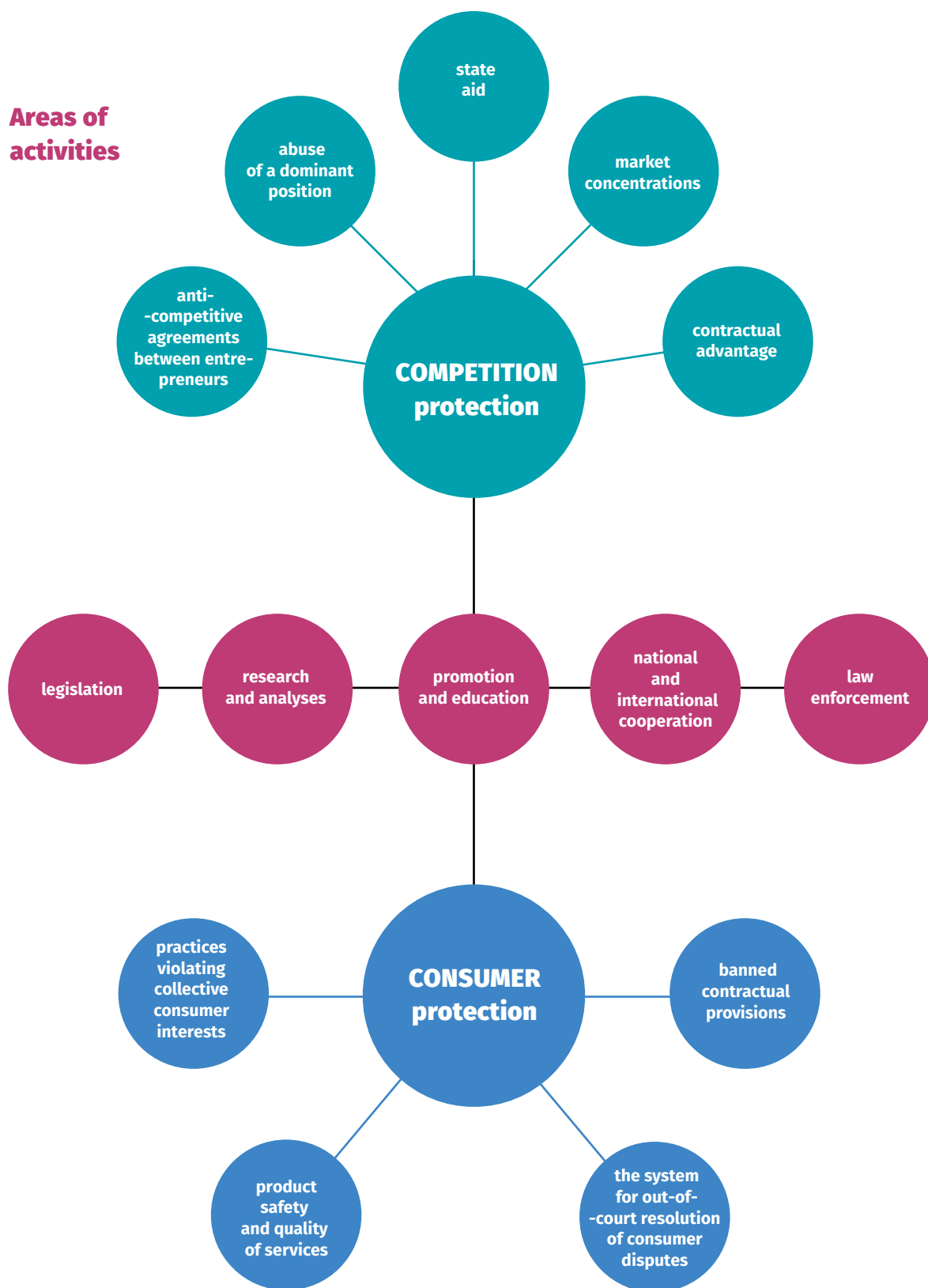
**PLN mn – FINANCIAL PENALTIES
imposed on entrepreneurs, including:**

PLN 1.1 mn for competition restricting practices
(the highest penalty PLN 931 thousand)

PLN 9.9 mn for practices violating collective
consumer interests (the highest penalty PLN 5 mn)

PLN 7 mn in relation to finding contractual clauses
to be prohibited (the highest penalty PLN 6.98 mn)

Areas of activities



Organisational structure and division of responsibilities (status as at 31 December 2018)

President

Executive Office
Press Office
State Aid Monitoring Department
Market Analyses Department
Laboratories Department

Vice President (competition protection)

Competition Protection Department
Concentration Control Department
Legal Department
Branch Offices

Vice President (consumer protection)

Department for Protection of Collective Consumer Interests
Trade Inspection Department
Market Surveillance Department

Cooperation with consumer organisations and consumer
ombudsmen

Director General

HR, Training, and Organisation Office
Budget and Administration Office
Independent Position for Protection of Classified Information

UOKiK's Head Office in Warsaw and 9 Branch Offices:

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

Introduction

Both in relation to consumer and competition protection, in 2018, there was a focus on implementing new regulations adopted in the preceding years and developing programmes and instruments for obtaining information on the irregularities in the market.



2018 was the first full year when the provisions of **the Act on counteracting the unfair use of contractual advantage in the trade in agricultural and food products** were applied. Using its authority, UOKiK intervened in the market by initiating proceedings, summoning companies, and performing numerous controls. In March 2018, the first decision was issued, aiming to restore the contractual balance in the relationships of buyers and suppliers. After a year of the act's application, there was a need to update its provisions. Currently, the Office may initiate actions in any case of contractual advantage being used, regardless of the level of turnover generated between the supplier and the buyer.

Detecting the most serious violations of antitrust law remains one of UOKiK's priorities in the field of competition protection. To this end, **investigative powers, such as searches at company premises, were increasingly used**. The signals received from anonymous persons were treated as an equally important source of information about competition restricting practices. 2018 saw a further development of Whistleblower programme.

The Office's efforts to detect bid rigging are also associated with combating anti-competitive agreements. They consist primarily in conducting proceedings, including in local markets, and monitoring public tenders. Effective competition protection also consists in the Office's activity with regard to controlling the largest transactions in the market. In 2018, the highest number of decisions (229) on concentration of entrepreneurs was issued in 11 years.

As in the previous years, UOKiK placed **great emphasis on protecting consumers in the financial services market**. The year brought further proceedings and decisions regarding practices infringing collective consumer interests and finding contractual clauses to be prohibited. The Office's activities covered, among other, banks, and the reservations were related to clauses applied in loan agreements, fees charged for payment cards and credit certificates. UOKiK's decisions were also related to the way banks inform about changes in agreement terms and the use of a durable medium for this purpose.

In addition, the Office intervened with UFK in relation to life insurances, initiating further proceedings against

insurers and questioning the contractual clauses in agreements with consumers and the practice of mis-selling. The topic of growing controversy was also the sale of corporate bonds due to irregularities in the way they are offered and sold, reported by consumers in complaints. UOKiK initiated proceedings in this respect and made first charges against companies. Moreover, in 2018, the President of UOKiK gained **new competences in the financial market**, consisting in the possibility of imposing fines on persons managing companies, who intentionally violated the collective consumer interests or who knew of illegal contractual clauses being used.

In the area of consumer protection, **the issue of unfair practices applied by entrepreneurs during sales presentations** remained the major challenge. UOKiK monitored their conduct, using, among others, the institution of a mystery shopper. It allows the ongoing identification of irregularities and the collection of information serving as evidence on practices violating the collective consumer interests. In May, the Office's employees acted as mystery shoppers for the first time as part of an investigation in a consumer case, and 15 controls were carried out in total using this procedure in 2018. Another issue constantly recurring in UOKiK's decisions were also **the irregularities in the telecommunications market**, consisting in particular in misleading consumers about the offer and falsely impersonating the current operator. Both of those unfair practices mainly targeted the elderly. This social group was the addressee of two information campaigns of the Office – "Be careful, senior!" and "Don't be deceived, senior" delivered in cooperation with ZUS, KRUS and the Polish Police Headquarters.

In 2018, **UOKiK was also involved in cooperation between institutions at national and international level**. In addition to taking ongoing actions to protect competition and consumers, this activity consisted in participating in the legislative process initiated by other institutions. An example was the work on the amending the so-called the Development Act and the Telecommunications Law Act, as well as on the "New Deal for Consumers" developed by the European Commission.



Chapter 1.

COMPETITION PROTECTION

UOKiK ensures the proper functioning of competition in the market, as it determines the economic development. As a result, effective competition benefits both entrepreneurs and consumers. That is why it is so important in this context to eliminate all manifestations of disturbing distortions of market competition, to prevent such occurrences and to promote pro-competitive solutions.

UOKiK's activities are focused on combating competition restricting practices and counteracting the unfair use of contractual advantage. Moreover, it controls concentration of entrepreneurs and monitors state aid provided by the state.



JANUARY

15 January

The European Commission approved investment aid for SMEs in Polish shipbuilding sector

EC agreed to grant regional aid to Poland for investments by SMEs operating in the shipbuilding sector in the Pomeranian and West Pomeranian provinces. The total budget is ca. PLN 77 mn. According to the Commission, these funds will be used to modernise the sector, which has been very important for the local economy for many years.



FEBRUARY

08 February

The European Commission approved the changes to the restructuring programme for Polish mining

The aid programme for the hard coal sector was approved by the European Commission in 2016. Within two years, significant organisational transformations took place in Polish mining enterprises, aimed at adapting them to the changing market situation. Updated in 2018, the aid programme is to support the further development of the sector.

28 February

IV workshops from the Economy of the competition law series

The "Vertical Concentrations" workshops were organised jointly with Compass Lexecon and the Competition Law Association. The discussion was devoted to the role of economy in controlling vertical transactions and practical problems related to their assessment.



MARCH

05 March

Contractual advantage – the first decision of UOKiK

The case concerned the application, by Cykoria S.A., of practices that unfairly use the contractual advantage over suppliers of carrots. The decision of the Office¹ obliged the company to shorten payment terms for the purchased carrots and introduce a non-discriminatory schedule of supplies.

27 March

Judgment of the Court of Appeals on the cement cartel²

In 2009, UOKiK found that seven gray cement producers had entered into a prohibited agreement consisting in price fixing and market sharing (DOK-7/2009). Over 9 years after issuing the Office's decision, the Court of Appeals issued a judgment in this case, in which it shared the position of UOKiK and confirmed the practices alleged against the companies. At the same time, it reduced the fines imposed on cement plants to ca. PLN 228 500 mn.

¹ Decision RBG-3/2018.

² Ref. No. VI AGa 3/18.



APRIL

17 April

UOKiK search at the premises of 5 companies from the music industry

The search was coordinated with competition authorities of other EU Member States. It was conducted as part of the investigation procedure to determine whether an anti-competitive agreement was concluded between Yamaha Music Europe and its distributors consisting in fixing minimum prices for products sold online. The collected material became the basis for initiating antitrust proceedings.

18 April

Withdrawal by PKPE Holding of the application for consent to take over control of Elester-PKP

The entrepreneurs operate in the market of railway components. The UOKiK's analysis showed that there could be a significant restriction of competition in the national market of individual components for traction substations and EZZ devices powering the railway network and an increase in the prices of these products. In response to UOKiK's reservations to the concentration, PKPE Holding withdrew the concentration application and the Office discontinued the proceedings.

30 April

Initiation of proceedings regarding the concentration of Gazprom and five other entrepreneurs constructing Nord Stream 2 gas pipeline

This precedent-setting proceeding of UOKiK aims to clarify whether the six companies which in 2016 failed to obtain the consent of UOKiK for the concentration, nevertheless jointly deliver a project involving the financing and construction of Nord Stream 2 gas pipeline.



MAY

30 May

Nearly PLN 1 mn penalty for bid rigging

The case was related to the collusion of three IT companies which tried to influence the outcome of three public procurement procedures for hosting and collocation of servers. The agreement leader – Infomex – was subject to the highest fine of over PLN 931 thousand. The total amount of the sanctions against collusion participants was PLN 999,145.



JUNE

07 June

EC agrees to increase aid for inter-modal transport in Poland

The Commission approved changes to the aid programme envisaging the construction and modernisation of inter-modal transport, rolling stock, and specialised equipment used in inter-modal transport under the Operational Programme “Infrastructure and Environment for 2014-2020.” The increased project budget will amount to PLN 2 bn. Inter-modal transport means transportation of loads using more than one type of transport and using one type of loading unit, e.g. container, during the entire route.

21 June

V workshops from the Economy of the competition law series

Another meeting for lawyers and economists organised in cooperation with Compass Lexecon and the Competition Law Association. This time, horizontal concentrations were discussed. The special guest was Damien Neven, PhD, Senior Advisor at Compass Lexecon and former Chief Economist for Competition at EC DG COMP.

22 June

Fitness market – accusations also against managers for the first time

As part of antitrust proceedings, 16 entrepreneurs were charged, including the largest fitness networks in Poland and the operator of sports and recreation packages (e.g. Multisport). The allegations relate to the suspicion that the fitness clubs divide the market and make arrangements between each other and the operator of Benefit Systems. For the first time, proceedings are also conducted against the managers responsible for participating in the collusion. They face a penalty of up to PLN 2 mn.



JULY

04 July

Appointment of a Project Team to create a new state aid monitoring system

The project consisting in the creation, testing and implementation of a new version of the system for registration and monitoring of state aid and *de minimis* aid, SHRIMP ver. 2. It is delivered from the Cohesion Fund After PT 2014-2010. The currently operated IT system, SHRIMP, is no longer able to handle ca. 7,000 users and process the current amount of data entered (over one

million state aid cases). It was necessary to implement a technologically new solution that would allow users to monitor state aid more efficiently.



OCTOBER

15 October

SOKiK judgment upholding UOKiK's decision regarding PKP Cargo and a fine of over PLN 14 mn³

SOKiK shared the position of UOKiK contained in the decision of 2015 (DOK-5/2015), in which PKP Cargo's abuse of the dominant position was confirmed. Therefore, it also upheld the fine imposed on the company by the Office, which amounted to PLN 14,224,272.18.



DECEMBER

05 December

"Competition in the digital age" conference in connection with World Competition Day

The event, organised by UOKiK, the Competition Law Association, and Positive Competition as part of the celebration of the World Competition Day. The discussion was devoted to the impact of digital technologies on competition, including regulations regarding online platforms, price algorithms and new technologies. The second lead-

3 Ref. No. XVII AmA 45/16.

ing topic were the methods of obtaining information by antitrust authorities and protection of whistleblowers, i.e. persons reporting prohibited practices.

11 December

Entry into force of the amendment to the Act on counteracting the unfair use of contractual advantage⁴

The new regulations expand and simplify the application of the act. They provide for, among others, elimination of the minimum turnover thresholds, which will allow UOKiK to initiate actions in each case when contractual advantage is used.

19 December

Adoption by the Council of Ministers of reports on state aid and *de minimis* aid

The results of monitoring state aid granted to entrepreneurs in Poland, collected and presented in the form of

an annual report, consulted with government authorities and state institutions, were adopted by the Council of Ministers and then referred to the Sejm in accordance with the legislative procedure. In addition to the report on state aid, a report on *de minimis* aid granted to entrepreneurs was also provided.

20 December

Commitment to change the provisions of the procedure records – the railway infrastructure management market

The case concerned PKP Polskie Linie Kolejowe S.A., which UOKiK accused of abusing its dominant position in relationships with suppliers of railway products and technologies. The decision (DOK-2/2018) included the company's commitment to cease its practice and change the provisions of the safety procedure and of other documents on the rules of admitting products and technologies to the railway lines.

⁴ The Act on counteracting the unfair use of contractual advantage in the

trade in agricultural and food products dated 15 December 2016 (Journal

of Laws, 2019, item 517).

1.2 Competition restricting practices

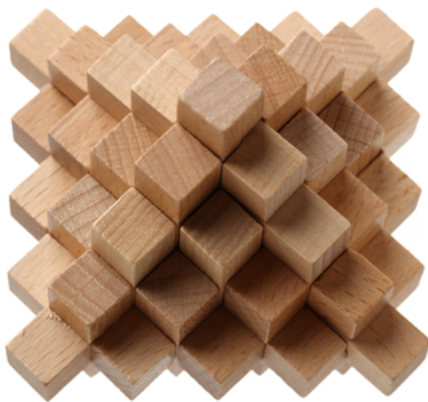
The antitrust act⁵ prohibits all **competition restricting practices**, i.e. business behaviours that disrupt free market mechanisms.

It splits the anti-competitive activities of entrepreneurs into two categories: agreements restricting competition and abuse of a dominant position.

Anti-competitive arrangements are agreements made jointly by several independent entrepreneurs whose purpose or effect is to eliminate, reduce or distort competition on the relevant market. This results in the participants of such an agreement gaining an advantage over other market participants.

RELEVANT MARKET

A market of goods which, due to their purpose, price, and properties, are considered by the buyers to be substitutable and are offered in an area where similar competition conditions prevail. The size of the share in the relevant market is a measure of the company's strength.



Prohibited agreements may in particular consist in joint price fixing, fixing the terms of tenders, market sharing, exchange of confidential information, restricting access to the market or eliminating entrepreneurs who are not included in the agreement.⁶

Such agreements may take the following forms:

- **Horizontal** – when agreements are made by competitors, i.e. entrepreneurs operating at the same level of trading in goods or services (e.g. manufacturers of substitutable goods, shops selling the same range, wholesalers operating in one industry). As a result of this cooperation, prices often rise and the quality of products drops. Other market players lose as a result, including consumers in particular. The most severe horizontal agreements are cartels.
- **Vertical** – when they apply to agreements between non-competing entrepreneurs operating at various levels of trading in goods or services (e.g. a wholesaler and a retail shop, a manufacturer and a distributor).

Competition law, however, provides for a few exceptions to the general prohibition on concluding anti-competitive agreements – the so-called trivial agreements, group and individual exemptions if certain conditions are met.⁷

⁵ Act on competition and consumer protection of 16 February 2007 (Journal of Laws, 2019, item 369), hereinafter

called: "UOKiK act".

⁶ An example of a catalogue of agreements restricting competition is

included in art. 6 sec. 1 of the UOKiK act.

⁷ Art. 7 and 8 of the UOKiK act.



BID RIGGING

These are agreements between entrepreneurs participating in a tender procedure or these entrepreneurs and the organiser of the tender. They are classified as the most serious violations of competition law. Antitrust laws prohibit tender participants from reaching an agreement regarding the terms of their bids, scope of work, or price. Such agreements may lead to an increase in the prices of the object of the contract, limit the choice and reduce the quality of services available to the contracting authority. Bid rigging may therefore nullify the goal to be achieved through a tender, namely the selection of the most advantageous bid submitted in competitive conditions. Ultimately, both the contracting authority and public finance lose.

The signs of tender collusion can be observed in various behaviours from its participants, consisting in coordinating their activities. Entrepreneurs do not have to set all the terms for participating in the tender. It is enough to agree on one of the elements of the proceedings (...) or that one of the potential bidders, who usually appeared in tenders, withdraws.* It is also possible that contractors jointly agree on not participating in a given tender or on creating an anti-competitive consortium.**

The most common form of bid collusion is the mechanism of placing and withdrawing bids. If the offers of collusion participants are the two most advantageous, then the winning bid is withdrawn. Formally, it is not usually possible to withdraw a bid, because its validity term applies at this stage of the tender procedure. Contractors usually resort to failing to complete the missing documentation (e.g. certificates) or failing to correct errors in the offer, as a result of which they become excluded or their offer is rejected.

* Judgment of the Court of Appeals in Warsaw dated 13 October 2009, ref. No. VI ACa 6/09.

** Judgment of the Court of Appeals in Warsaw dated 8 June 2016, ref. No. VI ACa 651/15.

In addition, **abuse of a dominant position is prohibited**. This applies to entrepreneurs with considerable market power who can act independently of their counterparties and competitors, and even consumers. It is presumed that a dominant position is held by an entity whose share in the relevant market exceeds 40 pct.⁹ The Act on competition and consumer protection lists examples of practices that constitute this type of abuse – these include imposing unfavourable rules of cooperation (including, for example, prices or payment terms), making the conclusion of an agreement conditional on using or providing another service by the other party, counteracting the conditions necessary for the emergence or development of competition. Importantly, **the mere possession of a dominant position is not prohibited, but it is unlawful to abuse it**.

Explanatory and antitrust proceedings

For UOKiK, the basic source of information on any irregularities is market monitoring and the information sent from market participants. The material collected in this way then becomes the basis for launching the most important tool in the field of competition protection, i.e. proceedings. In connection with a suspected violation of the rules of competition, the President of UOKiK **initiates explanatory or antitrust proceedings regarding competition restricting practices**. Explanatory proceedings are conducted in a given case, rather than against specific entities. The President of UOKiK may, within its framework, or regardless of the activities carried out, **call** entrepreneurs to provide explanations, change, or cease unfair activity – this is the **so-called soft action**. Such actions allow for a much faster elimination of prohibited practices from the market than in the case of formalised proceedings directed against specific entities. The Office may also decide to carry out controls and **search** the premises and belongings of a company.¹⁰

8 It is worth emphasizing that an entity may have a dominant position, even if its share in the relevant market is less than 40 pct. The presumption introduced by the antitrust act should

help determine a company's position in the relevant market.

9 An example of a catalogue of competition restricting practices is included in art. 9 sec. 2 of the Act on competition

and consumer protection.

10 Until 17 January 2015, the searches could only be performed as part of controls. From 18 January 2015 (i.e. the date of entry into force of the amended Act

on competition and consumer protection) searches and controls are carried out separately.

In 2018, UOKiK conducted 9 searches at the premises of 28 entrepreneurs.

Searches at the company's premises are one of the most effective means of collecting evidence of unlawful practices. The Office carries them out as part of explanatory proceedings, when it is suspected that a given entity holds relevant information that may constitute evidence in the case. Each time, UOKiK must obtain the court's consent for a search. Collecting evidence is very often assisted by the police. It may consist of searching documents, data from computers and phones, listening to statements of persons managing the enterprise.

The effect of explanatory proceedings may be the initiation of antitrust proceedings regarding competition restricting practices or termination of the case, without making charges of violating the rules of competition.

There is a penalty of up to 10 pct of the company's turnover for participating in a restrictive agreement, and managers involved in the infringement may face a penalty of up to PLN 2 mn.

Antitrust proceedings are conducted in connection with alleged infringement of the rules of competition. They may apply to entrepreneurs, and in certain cases also to managers. If the Office intends to terminate the proceedings by finding an application of a practice or imposing a financial penalty, it may present the party of the proceedings a **Detailed Statement of Allegations**. Thanks to this, the company can relate to UOKiK's findings before the issue of the final decision.

The proceedings may end with an **order to cease competition restricting practices** or a **financial penalty** for the company. There is also the possibility of an amicable conclusion to the case. The antitrust act provides for two amicable solutions – **voluntary submission to punishment** and issuing a **decision committing** the company to take specific actions that will eliminate market irregularities. In principle, UOKiK does not issue binding decisions in the event of allegations concerning

New proceedings – 2018

64

explanatory

12

antitrust*

regarding competition restricting practices, including: horizontal agreements – 9, vertical agreements – 3, abuse of a dominant position – 1

3

review of a decision's implementation

3

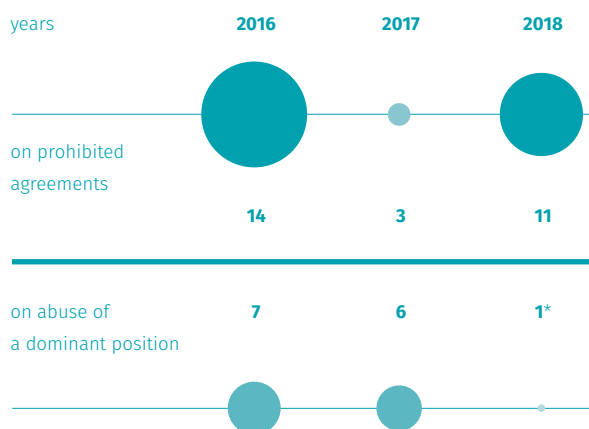
on imposing a penalty**

* As part of one antitrust proceeding, two charges were raised: the conclusion of a horizontal and vertical agreement.

** Proceedings regarding imposing a penalty for failure to perform or de-

lay in performing a decision, for failure to provide UOKiK with the requested information or providing false or misleading information, for failure to cooperate in the course of the control.

Proceedings instigated in 2016-2018



* UOKiK's proceedings regarding abuse of a dominant position concerned mainly water and sewage services. On January 1, 2018, the Polish Water Management Entity was established, which, among others acts as a price regulator on the water supply and sewage dis-

posal market. In connection with the establishment of the new entity, UOKiK abandoned prosecuting practices on local municipal services markets, which was reflected in the statistics on proceedings in 2018.

Decisions issued – 2018

8

**decisions on competition
restricting practices**, including:
3 on horizontal agreements
5 on abuse of a dominant
position

PLN 1,1 mn
in total fines

2

decisions confirming
bid rigging

1

**accepted commitment
from an entrepreneur**

2

**cases of national and EU
regulations being taken into
account**

For failing to provide information or providing false or misleading information, the President of UOKiK may impose a financial penalty on the company in the amount of up to EUR 50,000,000. This is to prevent impeding or preventing delivery of UOKiK's duties.

In the course of ongoing explanatory or antitrust proceedings, the President of UOKiK may demand that the company should provide information or documents relevant to the case. This may apply both to entrepreneurs who are a party to the proceedings or to any entity with the status of an entrepreneur.

Other activities

368

formal notifications regarding antitrust
practices

the most serious agreements restricting competition, e.g. bid rigging.

Antitrust proceedings regarding competition restricting practices are always instigated by operation of law. However, UOKiK attaches great importance to notifications regarding prohibited agreements, including those from **anonymous whistleblowers**.

For details of the Whistleblower programme, go to konkurencja.uokik.gov.pl.

1625

market signals, including as part of the
programme for whistleblowers

77

new soft actions
in relation to entrepreneurs

5

**controls
conducted**

9

**searches
conducted**

3

**detailed justifications
for allegations** under
antitrust proceedings

Leniency programme

An entrepreneur who entered into an agreement restricting competition may avoid financial sanctions if it admits to participating in the agreement and presents evidence of such a practice to UOKiK.

This procedure is called the leniency programme. To use it, a company applies to the Office for waiving or reducing the financial penalty (leniency application), documents the course of the agreement and indicates its participants. From that moment, it is obliged to immediately cease the unlawful agreement if until filing the application it was still a party to it. Importantly, **only the first applicant in a case can apply for complete abolition of the financial penalty.**

The application submitted by an entrepreneur also protects the managers of this entity, provided that they cooperate with UOKiK. As a result, the release or reduction of a penalty imposed on a company means similar benefits to natural persons. A manager may also take part in the leniency programme regardless of the company in which he/she is employed. He/she is also entitled to submit an application if he/she is no longer associated with the company.

Entrepreneurs and managers do not form two separate queues for the leniency programme. This means that the first applicant, company or natural person benefits from being released from penalty, while the second one can only apply for its reduction.

Entrepreneurs applying for penalty reduction may also benefit from an additional solution, which is the **leniency plus programme**. It consists in the fact that the applicant may receive an additional reduction at 30 pct if he/she provides the Office with information and evidence regarding another agreement previously unknown to the President of UOKiK in which he/she participated. It will then be granted the status of the first applicant in the latter case and may avoid a financial penalty.

Leniency requests

2018	2017	2016
7 (including 1 leniency plus)	7	3 (including 1 leniency plus)

Searches*

2018	2017	2016
9	8	5

* Shows the number of proceedings, in which searches were used.

For details on leniency procedure, go to konkurencja.uokik.gov.pl. It is a compendium of knowledge about the competencies and activities of UOKiK in the field of competition protection.

Application of EU competition law

Competition restricting practices are subject to both the Polish antitrust act and EU regulations. The condition for applying the EU competition law is, according to art. 101 of the Treaty on the Functioning of the European Union (TFEU), the possibility of such practice influencing trade conditions between Member States. In this case, UOKiK and Polish courts are obliged to apply the Treaty directly (Articles 101-102 TFEU) and in parallel to it, the national regulations on competition law. In 2018, the Office ran 3 proceedings in which it concurrently applied Polish and EU regulations, and issued 2 decisions in this regard.

Review of activities – competition restrictive agreements

Whistleblower

The Whistleblower programme launched by UOKiK in 2017 consists in obtaining information on potential infringements from anonymous persons. 2018 brought further development of the programme – **over 1,560** such applications were recorded in 12 months. Whistleblowers may be, for example, former or current employees of entrepreneurs violating antitrust laws.

Work on the EU whistleblower directive

In June 2018, on the initiative of the European Parliament and the EU Council, work began on the new Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting violations of Union law (COM (2018) 218). This document aims to introduce the institution of protecting whistleblowers into the legislation of the Member States. These persons report (in their capacity or to an external entity) or disclose to the public opinion the information on abuses obtained in connection with their work. They thus contribute to preventing damage and detecting threats to the public interest. However, there are not many such reports as whistleblowers are reluctant to do so because of the fear of retaliation. The proposed solutions impose an obligation on the states to create appropriate procedures for signalling irregularities in the public and private sectors and to punish attempts of retaliation on whistleblowers by the employer.

UOKiK was involved in consultations at national level and provided its comments to the draft EU directive. The Office supported the solution proposed in the Position of the Government of the Republic of Poland, allowing the protection of a whistleblower who made a report to an external entity, bypassing the path inside the entity in whose operation the irregularities appeared.

Work on the new directive continues in 2019 at the level of the Council of the European Union.

Monitoring public tenders

Detection of bid rigging is one of UOKiK's priorities. In 2018, the Office **analysed 389** public procurement **proceedings**. In total, it **conducted 63 proceedings** aimed at determining if there were prohibited agreements concluded between bidders.

One of the examples of counteracting bid rigging effectively was the antitrust investigation of UOKiK against three IT companies – Infomex, Nabino and ncNETcom, which offered server hosting and collocation services, ended in May 2018. Server collocation involves making space available for external entities in a server room, while hosting is renting space on the server of the service provider. The Office found that **in the years 2012-2015 entrepreneurs tried to influence the result of three**

tenders – twice successfully, and the injured institution was the Małopolska Marshal's Office. Nabino and ncNetcom participated in the proceedings as contractors directly applying for the contract, while Infomex was in each case their subcontractor. In one tender, the company appeared in a double role and also submitted its bid. Evidence of concluding an unlawful agreement was collected by UOKiK during a search at the company's premises. The entrepreneurs used the mechanism of placing and withdrawing bids – they submitted price-differentiated proposals, and then led to the situation in which the winning offer was rejected by the contracting authority for formal reasons. Thus, the most expensive proposal ultimately won, and Małopolska Marshal's Office was forced to use services that were more expensive, by almost PLN 0.6 mn. The leader of the agreement was Infomex, which coordinated all activities before and after the opening of bids and prepared the bids of collusion participants. Thanks to this, the company gained control over the course of the tenders and actually carried out all orders as a subcontractor. UOKiK imposed the highest fine on Infomex, in the amount of PLN 931 465, while Nabino and ncNetcom were punished with PLN 19,866 and PLN 47,814 respectively.¹¹ The total amount of penalties is nearly PLN 1 mn (PLN 999,145). The decision is not final.

UOKiK suspected the **application of the mechanism for placing and withdrawing offers** also in the case of entrepreneurs involved in the supply of fruit and vegetables. As a result, in September 2018, three antitrust proceedings were instigated against eight entrepreneurs from the Pomeranian Province.¹² They took part in tenders for the supply of fruit and vegetables and their products to public institutions, including hospitals and prisons. The Office's findings show that they tried to influence the results of several public procurement proceedings. If the offers of collusion participants were the most advantageous, the winner of the tender would refrain from signing the agreement and the contracting authority was forced to choose the more expensive bid of the second or subsequent collusion participant. As a result, the organiser of the tender incurred a significant increase in the price of supplies in relation to the lowest bid submitted. The proceedings of UOKiK were continued in 2019.

¹¹ Decision RKR-3/2018.

¹² For more details, go to the press

release at: <https://www.uokik.gov.pl/>

[aktualnosci.php?news_id=14930](https://www.uokik.gov.pl/aktualnosci.php?news_id=14930).

UOKiK has an e-learning platform dedicated to bid rigging www.szkoleniazmowy.uokik.gov.pl (more in part “Information and educational activities”).

Division of the bus passenger transport market

A restrictive agreement may consist of **market sharing between competitors**. This happened in the case of two entrepreneurs providing bus passenger transport services in Piła district of Wielkopolskie province. Rafbus and Przedsiębiorstwo Komunikacji Samochodowej in Piła agreed which bus lines would be served by them. UOKiK instigated explanatory proceedings in response to a notification of one of the participants in the collusion – Rafbus carrier. It accused its competitor, PKS in Piła, of abusing its dominant position in the local bus passenger market. The Office’s analysis did not confirm these allegations, but showed another prohibited practice applied by PKS, namely market sharing with the notifier – Rafbus. The entrepreneurs met at the offices of PKS and determined on which lines they would conduct their activities so as not to compete with each other. Thanks to this, they were able to apply higher ticket prices in the agreed directions than it is in the conditions of a healthy competition for passengers. The collusion concerned connections in Piła district – Rafbus resigned from providing services on its new Rzadkowo-Kaczory-Piła line, and in return PKS retired from transport on the section Białośliwie-Miasteczko Krajeńskie. The initiator of the prohibited agreement was PKS, which suggested to Rafbus that it would lower its ticket prices and thus impede its operations, or even eliminate it from the market. The collusion lasted in the years 2015-2017. In the decision issued in December 2018,¹³ the President of UOKiK imposed a fine of over PLN 95 thousand on PKS in Piła, while Rafbus avoided financial sanctions. UOKiK took into account that, although unknowingly, the entity voluntarily provided information on a prohibited agreement. PKS in Piła appealed against the decision to SOKiK.

Fitness market under the lenses of UOKiK – allegations for managers

Recently, UOKiK has looked at the fitness market in Poland. Searches conducted in 2017 at the premises of fitness chains (including operators of Calypso, Fabryka Formy, Zdrofit, Fitness Platinum, Fitness Academy) and the office of Benefit Systems, the largest operator of sports and recreation packages in Poland, resulted in the initiation of antitrust proceedings in June 2018. Sports and recreation packages are one of the most common non-cash employee benefits offered by employers – around 1 mn users use Multisport cards in Poland. The allegations were brought against 16 entrepreneurs¹⁴ suspected of **concluding a horizontal and vertical agreement restricting competition**. The horizontal allegation concerns the possibility of market sharing by a group of fitness club networks, with Benefit Systems acting as the collusion coordinator. Entrepreneurs could jointly determine in which regions in Poland they would operate. They could also take certain locations or areas of cities if they had an interest in one of them, or if one of them, contrary to previous arrangements, opened its club in the area assigned to another fitness network. The second violation is of vertical nature and concerns the allegation of concluding exclusive cooperation agreements by Benefit Systems and a group of the most attractive fitness club networks. Such actions could obstruct access to the market for competitors of Benefit Systems, put employers looking for alternatives to Benefit Systems packages at a disadvantage, and deprive consumers using other packages of access to some fitness clubs. **Importantly, for the first time, UOKiK decided to initiate proceedings also against natural persons.** As part of the proceedings, charges were directed against six company managers, who are facing a penalty of up to PLN 2 mn. The proceedings are conducted on the basis of Polish and EU competition law. Activities in relation to entrepreneurs are continued in 2019.

¹³ Decision RPZ-11/2018.

¹⁴ For the detailed list of entities, go to the press release under the address:

https://www.uokik.gov.pl/aktualnosci.php?news_id=14496.

Manipulating prices in the market of printers

Antitrust proceedings of UOKiK against Brother Central & Eastern Europe were instigated in September 2018 due to the suspicion that the entity and retailers set minimum sale prices for Brother printers. BCEE is a part of the Japanese Brother Industries corporation which manufactures printers, scanners, fax machines and is responsible

UOKiK brought allegations against



entrepreneurs from fitness market.

for the distribution of Brother brand products in the region of Central and Eastern Europe, including Poland, in which it operates through a branch in Warsaw. It sells products only to wholesalers, but maintains commercial relationships with retail shops, as well as prepares the suggested retail prices for Brother products. According to the information obtained by the Office from an anonymous whistleblower and evidence collected during the search, the retail prices suggested by Brother might in fact function as minimum resale prices. Employees of the company were to discipline shops that wanted to sell printers cheaper, threatening, among others, taking away or limiting discounts and surcharges. At the same time, the retailers had to observe each other's prices and inform Brother of those who did not comply with the prices suggested by the company. This unlawful act could have limited the competition and caused consumers to pay more for Brother products. In competition law, it is called **RPM (resale price maintenance), which means an agreement or concerted practice whose direct or indirect purpose is to set a fixed or minimum resale price.** Such an agreement is treated as a serious violation of

antitrust laws. The proceedings of UOKiK are conducted on the basis of Polish and EU competition law. They are continued in 2019.

Price fixing on the market of musical instruments

In December 2018, UOKiK instigated antitrust proceedings against Yamaha Music Europe pursuant to national and EU competition law regulations, as the unlawful practice could affect the trade between EU Member States.¹⁵ There is a suspicion that the company illegally set minimum sales prices for music equipment with online sellers. The Office's preliminary findings show that the agreement between trade partners could have lasted for several years. Sellers watched each other's activities and informed Yamaha Music Europe if any of them sold music equipment at cheaper prices. In such case, the company called them to change the price list, and if this did not work, it could cancel previously granted privileges, e.g. preferential prices, delivery of rare instruments, early deliveries or organising events with musicians. The proceedings of UOKiK are continued in 2019.

Review of activities – abuse of a dominant position

Commitment decision on the railway market

PKP Polskie Linie Kolejowe S.A. manage almost all railway lines in Poland. In September 2017, UOKiK instigated antitrust proceedings against the company in connection with the alleged **abuse of its dominant position on the national railway infrastructure management market.** The Office's doubts were raised by the provisions of the "SMS-PW-17 Safety System" procedure, related to the rules of authorisation for the use of railway products and technologies, such as rails, sleepers or overhead contact lines. According to them, the company must agree to use each product in railway lines managed by PKP PLK. The supplier must therefore go through the certification process in order to be able to offer products

¹⁵ Art. 101 TFUE.

¹⁶ Decision DOK-2/2018.

and technologies not only to PKP PLK itself, but also to other entities to which the company contracts the construction, renovation or modernisation of railway lines. In December 2018, UOKiK found¹⁶ that competition could have been limited by the provisions of the procedure imposing an obligation on the supplier to agree that the maximum compensation limit for any claim related to the certification process may not exceed the value of one complete product that is the subject of the application. According to the Office, it was also banned to transfer to the applying supplier all liability for damages resulting from in-service tests, including damages caused to third parties. In addition, UOKiK questioned the provision of the procedure which suspended its application if the supplier filed a complaint or claim. Such a decision could discourage entrepreneurs from filing complaints or claims to PKP PLK, as during their sometimes prolonged consideration, the supplier was in practice deprived of the opportunity to sell its products. In the course of the proceedings, PKP PLK **made a commitment to change its practices**. According to it, within a month of the decision becoming final, it will withdraw from the "Security SMS-PW-17" procedure the provision on suspending the certification process for the duration of handling the complaints and claims. In the case of the other two challenged provisions, the company undertook that it would not apply them in any documents regarding the rules of authorising products and technologies on its railway lines. The company was also obliged to submit a report on the implementation of the decision. The Office's decision is final.

Dominated market of postal services?

Poczta Polska S.A. (PP),¹⁷ which has the status of a designated operator¹⁸ in the years 2016-2025, is required to provide universal postal services¹⁹ throughout the country, at affordable prices and perform them with the specified regularity. PP also provides – on the basis of free competition – the so-called universal postal services, competing with other entities in the delivery of letters and advertising items. Independent entrepreneurs

who do not have such an extensive postal network must also use PP services to provide postal services to their customers throughout the country. Therefore, they are in a dual position in relation to PP, i.e. of a competitor and counterparty.

In July 2018, UOKiK instigated antitrust proceedings against Poczta Polska, **suspecting that it might be abusing its dominant position**. The doubts were related to the terms of agreements that PP concluded with its counterparties who provide universal postal services to their customers. First of all, a PP's counterparty had to provide commercial information about its customers, which seemed to be an unjustified practice of collecting such data as early as in the contracting stage. In addition, the agreements lacked a fixed price list for the services offered, which meant that each time, pricing had to be made individually, and an independent company was unable to provide its customers immediately with the cost of the service. Therefore, these contractual restrictions affected its attractiveness as a business partner. Moreover, such counterparty of PP had to determine in advance the number of shipments sent in a given settlement period. In the event of failure to make such a declaration, the price for all shipments might rise to the rate offered for low volumes of shipments. As a consequence, the company could have concerns about the future financial standing of its operations.

All Poczta Polska's actions challenged by the Office could lead to eliminating the competition, and thus to higher prices and lower quality of services. The proceedings continue in 2019.

¹⁷ Poczta Polska with registered office in Warsaw, provides postal services in the form of parcels pursuant to the provisions of the Postal Law act of 23

November 2012 (Journal of Laws of 2017, item 1481, as amended, hereinafter referred to as "Postal Law").

¹⁸ Universal postal services can be

defined as the minimum set of postal services established in the provisions of the Postal Law and at equal standard for all users throughout the country.

¹⁹ This activity is entrusted for a limited time to one operator only, selected in a competition by the Office of Electronic Communications.

1.3 Contractual advantage



Contractual advantage occurs when there is a large disproportion in economic potential in the relationship between entrepreneurs operating in **the agricultural products and foodstuffs industry**. This applies both when the conditions are imposed by the buyer against the supplier and vice versa.

Just having contractual advantage is not prohibited, but it is **not allowed to use it**. It may consist in particular in an unjustified termination of an agreement or a threat of its termination or of giving the right to terminate or withdraw from it only to one party to the agreement. In addition, the dominant entity makes the conclusion or continuation of the agreement subject to the other party's performance of a service unrelated to the subject of the agreement. Finally, the advantage may manifest itself in an unjustified extension of payment terms for the delivered products.

In order to prevent such practices, the provisions of the Act on counteracting the unfair use of contractual advantage in the trade in agricultural and food products have been in force since July 2017.²⁰ After a year of its application, the Office, together with the Ministry of Agriculture and Rural Development noticed **the need to amend** its provisions. The changes introduced in December 2018 are intended primarily for small and medium-sized entities, as **they abolish** turnover **thresholds**. Earlier, UOKiK could intervene only if the total value of turnover between the supplier and the buyer exceeded PLN 50 thousand in any of the 2 years preceding the year of initiation of proceedings and the turnover of the buyer or supplier who used illegal practice exceeded PLN 100 mn in the year preceding the year of instigating the proceedings. Currently, the Office may initiate actions in any case of using the contractual advantage.

In addition, the changes give everyone the opportunity to notify UOKiK of suspected fraudulent use of contractual advantage and **guarantee full anonymity to the notifier**. Another significant change is the simplified procedure of declaring, by the President of the Office, the immediate enforceability of his decisions. This means an immediate order to discontinue the practice that harms the interests of the weaker party, e.g. a farmer.

When does UOKiK take action?

The President of UOKiK conducts proceedings only **to protect the public interest**, i.e. to eliminate unfair commercial practices from business transactions, and not to compensate specific, injured entrepreneurs.

The Office may intervene:

- on the basis of a written notification from an entity that has knowledge of the practice of a dishonest use of contractual advantage – these are, for example, individual notifications, applications from industry organisations, signals from other authorities,
- based on own information or media reports.

UOKiK may consider a given practice to unfairly use the contractual advantage, order its abandonment and **impose a financial penalty of up to 3 pct of the turnover generated** by the company in the year preceding the decision. The proceedings may also end without financial sanctions. The Office will waive the penalty if the company undertakes to cease illegal practices or to remedy their effects.

Review of activities

First decision regarding contractual advantage – an example of successful cooperation

In March 2018, UOKiK issued the first decision regarding the unfair use of contractual advantage. It was related to a company called Cykoria S.A. – a producer of food concentrates, dried fruit and spices. The Office instigated

²⁰ Act on counteracting the unfair use of contractual advantage in the trade in agricultural and food products dated 15 December 2016 (Journal

of Laws, 2019, item 517).

UOKiK's activities in relation to contractual advantage*

1

decision on the unfair use of contractual advantage

7

controls as part of proceedings related to contractual advantage

11

explanatory proceedings

57

notifications from entrepreneurs

6

proceedings on practices of unfair use of the contractual advantage

26**

soft actions towards entrepreneurs

* Contractual advantage proceedings are conducted by UOKiK branch office in Bydgoszcz.

** Pursuant to art. 49a of the Act on competition and consumer protection of 16 February 2007 (Journal of Laws, 2019, item 369).

proceedings after receiving complaints from farmers who reported **unfair provisions in contracts for delivery of carrots**. Provisions on purchase dates were questioned as Cykoria did not specify in the agreements with suppliers any specific date for the collection of goods, thus threatening their crops to be lost. In addition, it extended the payment time and urged counterparties to pay a part of their remuneration to the trade association.

As a result of the agreement concluded with the company, UOKiK issued a commitment decision, pursuant to which the company agreed to shorten carrot purchase periods and payment terms. Farmers will no longer have their premiums deducted.

Explanatory proceedings and controls

Exercising its powers provided for in the act, UOKiK instigated explanatory proceedings and controls in connection with the alleged use of the contractual advantage. The Office controlled the terms of contracts between milk processing plants and milk suppliers on a large

scale. As a result, an industry **report was prepared** containing recommendations on how contracts should fairly regulate milk supply, sale, and contracting.²¹

Starting from Q2 2018, the President of UOKiK carried out **a number of controls** aimed at monitoring the soft fruit purchasing market, including strawberries, raspberries, cherries or currants, and industrial apples for violations of the act. Due to the concerning signals from farmers, UOKiK checked if the contractual advantage was used in relationships with small fruit suppliers.

A very significant problem was long payment terms and payment backlogs in settling liabilities in the fruit supply chain. In addition, unclear pricing methods in fruit purchase agreements were challenged.

Similar problems were also noticed in the course of proceedings instigated against sugar producer, Südzucker Polska, which was in arrears with payments to sugar beet suppliers.

The evidence obtained as a result of controls and calls to entrepreneurs in the course of explanatory proceedings then became the basis for instigating, by the President of UOKiK, **4 proceedings** regarding practices unfairly using the contractual advantage over entities operating in the fruit processing industry.²²

For more details, go to przewagakontraktowa.uokik.gov.pl.

SOFT CALLS

The President of UOKiK may, without initiating proceedings, contact a company regarding practices unfairly using the contractual advantage. Such calls are to check its agreements and market practices and to persuade it to stop any unfair activities against weaker trade partners.

(pursuant to art. 12 of the Act on counteracting the unfair use of contractual advantage in the trade in agricultural and food products)

21 Dairy production and processing market. Summary of the explanatory proceedings, Warsaw 2018,

https://www.uokik.gov.pl/aktualnosci.php?news_id=14284&news_page=3.

22 A summary of control activities and proceedings of the President of UOKiK can be found in the report "Using

contractual advantage". UOKiK report, Warsaw 2018, https://www.uokik.gov.pl/aktualnosci.php?news_id=15026.

1.4 Control of concentrations

UOKiK is responsible for controlling the largest transactions that have or may have an impact on the competition in the Polish market. This is to prevent the creation of entities with market power threatening or eliminating competition, e.g. by gaining or strengthening their dominant position. The control is related to the concentration of enterprises by way of a merger, acquisition, creation of a new company and acquisition of a part of another company's property.

There is an obligation to notify the intention of concentration if the total global turnover of the entrepreneurs participating in the concentration exceeds the equivalent of EUR 1 bn in the financial year preceding the notification year, or if the total turnover of the entrepreneurs participating in the concentration in the financial year preceding the notification year on the territory of Poland exceeds the equivalent of EUR 50 mn.

After conducting the proceedings, the President of UOKiK may:

- **consent to concentration** – if as a result, the competition in the market is not significantly limited,
- **consent to concentration under certain conditions** (this is the so-called conditional consent) – if after meeting them there is no significant restriction of competition,
- **issue the so-called extraordinary consent** for a transaction leading to a restriction of competition if it contributes to economic development or technical progress or can have a positive impact on the national economy,
- **prohibit the transaction** if as a result, competition in the market is significantly restricted.

If entrepreneurs make a concentration without obtaining the consent of UOKiK or do not provide information during the concentration procedure, **they may be fined**. In 2018, no penalty was imposed in this respect.

The reported cases of the intention to concentrate entrepreneurs are analysed **in two stages**. As part of the first stage of proceedings, most concentration cases are resolved that should not cause market problems. The second stage of proceedings is instigated in the case of more complex cases, when there is a high probability of the occurrence of negative effects for the competition or market research is required. Then, the deadline for ending the proceedings may be extended by additional 4 months.

In cases where there is a reasonable probability of a significant restriction of competition in the market, the President of UOKiK may also submit **reservations** regarding such transaction to the companies participating in the concentration. They then have 14 days to respond to the reservations, but this period may be extended by further two weeks at their request. The presentation of reservations by UOKiK does not prejudice the final result of the proceedings.

In 2018, about 96 pct of decisions were issued in the first phase of the proceedings. In most cases, the Office approved the concentration. In the case of 10 applications, they were returned to the companies (due to formal deficiencies, among others).

Apart from examining cases related to the Polish market, UOKiK **provides opinions on the proceedings conducted by the European Commission** in terms of the impact of concentration in the Polish market. In 2018, the Office issued an opinion on 390 cases, including merger of Siemens and Alstom.

New proceedings related to concentration control	252
Decisions issued	
consent to concentration	228
including:	
decisions ending proceedings in phase I	220
decisions ending proceedings in phase II	8
conditional consent	0
penalty for failure to report the intention to concentrate	0
penalty for failure to provide information	0
Other data	
discontinuance of proceedings by way of decision	1
return of the notification of the intention to concentrate	10
proceedings that went into phase II	12
average duration of proceedings in phase I	36 days*
average duration of proceedings in phase II	199 days**
cases reviewed in terms of the impact of concentration on the Polish market in connection with proceedings before EC	390
new explanatory proceedings***	7

* The actual time of considering the case was given, including the time limits covered by the exclusion under art. 96 sec. 2 of the Act on competition and consumer protection.

** The actual time of handling the case was given, including the time limits covered by the exclusion resulting from art. 96a sec. 8 of the Act on competition and consumer protection.

*** Related to the examination of the state of concentration in the economy and determining the existence of the obligation to notify the intention of concentration.

Approvals for concentration in 2016-2018

2016	2017	2018
194	205	228
consents to concentration	consents to concentration	consents to concentration
conditional consents 2	conditional consents 1	conditional consents 0

UOKiK's activities in the field of concentration control in 2018

2018 was a record-setting year for UOKiK in cases related to concentration control. The Office conducted 252 new proceedings, which resulted in **228 consents** to concentration and **1 discontinuation**.

Review of activities

Precedent proceedings of UOKiK regarding 6 companies building the Nord Stream 2 gas pipeline

The case of construction of the Nord Stream 2 gas pipeline was the subject of an analysis by UOKiK in 2016. At that time, the President of the Office considered that the planned concentration between Gazprom and five international companies could lead to restricted competition. Their joint company was to design, finance, build and operate the Nord Stream 2 gas pipeline running from the Russian Baltic Sea coast to the starting point near Greifswald in Germany. The transaction could strengthen Gazprom's position, which was still dominant in terms of gas supplies to Poland. Referring reservations to the applicants for the concentration led to the withdrawal of the application by the consortium participants. Meanwhile, in 2017, UOKiK had to re-examine the case, because the media reported that the gas companies, despite the lack of the Office's consent, are delivering the construction of the gas pipeline. As a result, in 2018, UOKiK instigated proceedings in the field of concentration control, under which it brought charges against entrepreneurs belonging to international groups: Gazprom from the Russian Federation, Engie from Switzerland, and four companies from the Netherlands: Uniper, OMV, Shell, and Wintershall.

Violating the prohibition of concentration despite the lack of consent from the President of UOKiK is subject to **a penalty of up to 10 pct. of the turnover**. In addition, if the concentration was carried out and the restoration of competition in the market is not possible, the President of the Office may order, for example, selling all or part of the entrepreneurs' assets, shares or stocks ensuring control over the company, as well as dissolving

the company over which the companies in question exercise joint control. The proceedings of UOKiK are continued in 2019.

Examples of proceedings conducted in phase II

The only reservations to transactions in 2018 – the technical gas market

In November 2018, UOKiK issued reservations in only one case – the intention of **Air Products & Chemicals** to take control of **ACP Europe** and **Eurocylinder**. Air Products & Chemicals capital group deals in the production and supply of technical gases, including carbon dioxide, nitrogen, argon, helium, or hydrogen. The acquired companies belong to ACP group, which specialises in the production of carbon dioxide. The Office decided to direct the proceedings to stage 2 in order to conduct research on CO₂ and dry ice market. It showed that the transaction could result in a restriction of competition. More than half of the carbon dioxide production and marketing market could be in the hands of Air Products and the company could have more than twice the market share of its competitor. Moreover, this advantage could increase in the coming years due to the planned launch of new installations. As a result, the transaction could have resulted in an increase in prices of liquid carbon dioxide, and for consumers – an increase in prices of carbonated beverages. The reservations raised by UOKiK were replied to by the entrepreneurs presenting conditions under which the concentration could take place. The Office accepted them and in February 2019 issued the final consent for the transaction.²² **Entrepreneurs were imposed obligations**, among which the most important included: AIR Products & Chemicals to dispose of a part of its production assets to an independent investor, agreements with Polish wholesale customers to be extended and not applying prices higher than the maximum one in relation to them.

Concentration in the meat market

UOKiK consented for **Smithfield Foods** to take over **Pini Polonia**.²³ This transaction was originally reported to

the European Commission, but EC referred the case to the Office, claiming that it only affects the Polish market, and UOKiK has sufficient knowledge and experience to investigate it. Smithfield Foods is a global corporation in the sector of meat processing and production. In Poland, it controls Animex group and has nine plants producing and processing meat, including three pig slaughterhouses. Pini Polonia is a part of Pini Group, consisting of companies from Poland, Italy, and Hungary. It has a slaughterhouse in Kutno and supplies meat to shops and processing plants. In this case, it was necessary to conduct market research. The analysis of the effects of the concentration has shown that it will not significantly restrict competition as Smithfield will have to compete with other slaughterhouses. In addition, it will not affect the access of small and medium-sized market participants to large meat buyers (e.g. retail chains).

Consent for acquisition of retail shops

UOKiK approved the acquisition of **Emperia** by **Maxima Grupe**.²⁴ The participants of the concentration run large-scale retail outlets (over 350 sqm) and traditional shops (smaller than 350 sqm). Maxima Grupe is a Lithuanian company, the owner of Aldi and Sano chains operating in Poland. Emperia is a company listed on the Stock Exchange, with a chain of Stokrotka shops. The concentration proceedings were referred to the second stage because UOKiK decided that the activity of these entrepreneurs overlaps in local retail markets of everyday consumer goods and the national market of supplies of these products. In addition, transaction participants could also be connected through a supplier-buyer relationship. It was therefore necessary to conduct market research and send surveys to the competing entrepreneurs. The analysis showed that there will be no significant restriction of competition in any of the local markets. After the takeover of Emperia, Maxima Grupe will still be forced to compete for consumers with other entrepreneurs.

Withdrawal of application – cable television and internet access market

In March 2018, **UPC Polska** withdrew its request to take control of **Multimedia Polska**. Participants in the concen-

²² Decision DKK-51/2019.

²³ Decision DKK-197/2018.

²⁴ Decision DKK-57/2018.

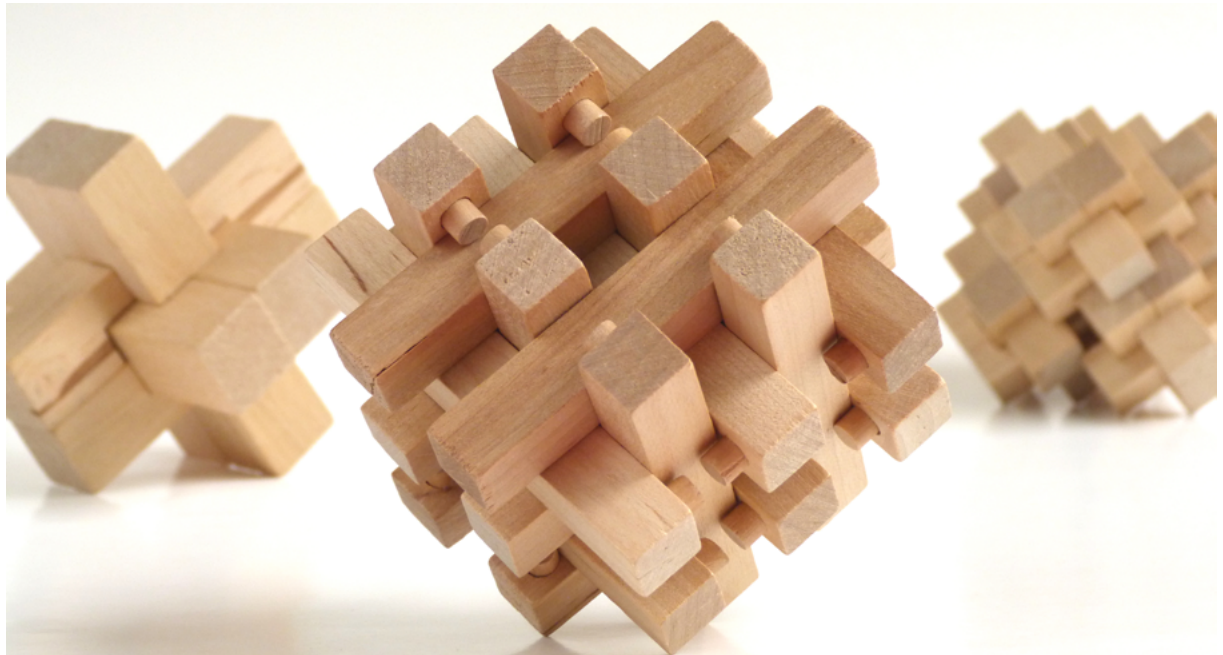
tration provide, among others cable television services and landline Internet access. The transaction envisaged the purchase, by UPC Polska, of 100 pct of shares in Multimedia Polska. Before that (October 2017), UOKiK presented its **reservations to this concentration**. The analysis showed that it can significantly reduce the competition in pay TV and landline Internet access markets in 15 Polish cities. Residents of these cities could pay more for cable TV and the Internet. In response, UPC Polska submitted several proposals to modify the transaction that could constitute the basis for a conditional decision by UOKiK. However, none of them would prevent the negative effects of concentration. After the withdrawal of the application by UPC Polska, the President of UOKiK discontinued the concentration proceedings.

Consolidation of the clothing market

UOKiK approved the merger of clothing companies: **Vistula Group** and **Bytom**.²⁵ Vistula specialises in design, production, and sale of designer men's and women's clothing as well as luxury jewellery and watches. Bytom operated on the branded men's clothing market. The merger consisted in transferring all of Bytom's assets

to Vistula in exchange for the company's shares. After the concentration, both brands were still to be present in the market. The key information provided in the application on the size of the relevant markets and the shares of the concentration participants and their competitors were based solely on the applicant's estimates. Therefore, UOKiK decided to conduct market research and refer the proceedings to phase II. The analysis of the material showed that the participants of the transaction compete with each other and other entities in the market of elegant, middle-class men's clothing, but they do not compete with producers offering luxury brands and the cheapest clothes. Finally, the Office found that the merger of the two clothing brands would not significantly restrict competition in any market where the companies operate. Therefore, UOKiK agreed to this concentration.

The website <https://www.uokik.gov.pl/koncentracje.php> contains information on all antitrust proceedings conducted by the Office regarding concentration. The database of the President of UOKiK https://decyzje.uokik.gov.pl/bp/dec_prez.nsf contains, among others, the previous decisions on concentration control.



²⁵ Decision DKK-143/2018.

Examples of UOKiK decisions regarding concentration control in 2018

In 2018, decisions on concentration control most often concerned the financial and insurance market, followed by real estate, automotive and foodstuffs industry.



Industry	Number of cases	Examples of decisions		
banking, investment funds, insurance	35	DKK-29/2018 consent for Ipopema TFI S.A. in Warsaw to take over control of Rezydent FIZAN in Warsaw	DKK-134/2018 consent for Vienna Insurance Group AG Wiener Versicherung Gruppe in Austria to take over control of Gothaer Towarzystwo Ubezpieczeń S.A. in Warsaw	DKK-192/2018 consent for Ipopema TFI S.A. in Warsaw to take over control of Sezam XX FIZAN in Warsaw
real estate (including the development market, space rental)	27	DKK-24/2018 consent to Echo Polska Properties (Cyprus) Plc in Cyprus to take over control of Poznań Żonkil S.A. in Warsaw	DKK-158/2018 consent for PG Dutch Holding I B.V. in the Netherlands, Marvipol Logistics S.A. in Warsaw and Hermes Platinum Sp. z o.o. in Warsaw to create a joint venture called PDC Industrial Centre 92 Sp. z o.o. in Warsaw	DKK-170/2018 consent for Atrium Group Services B.V. in the Netherlands to take over control of Prime Warsaw Properties Sp. z o.o. in Warsaw
automotive (including the car market)	18	DKK-75/2018 consent for Auto Sp. z o.o. in Motycz to take over control of Summit Motors Poland Sp. z o.o. in Warsaw and Summit Auto Poland Sp. z o.o. in Warsaw	DKK-102/2018 consent for Faurecia Exhaust International S.A.S. in France and RTA GmbH in Austria to create a joint venture	DKK-140/2018 consent for Construcciones y Auxiliar de Ferrocarriles S.A. in Spain take over control of Openaco Trading Co., Limited in Cyprus
foodstuffs (meat, vegetable and fruit processing, drinks)	17	DKK-31/2018 consent for Super-Drob Zakłady Drobiarsko-Mięsne S.A. in Karczew to purchase the property of Indykpol S.A. in Olsztyn	DKK-150/2018 consent for the merger of Koto Regional Dairy Cooperative in Koto with the Regional Dairy Cooperative in Konin	DKK-197/2018 consent for Smithfield Foods, Inc. in USA to take over control of Pini Polonia Sp. z o.o. in Kutno

1.5 State aid

The interests of all market entities are most fully and effectively realised by the free market itself without any external interference, and competition is its necessary and inseparable element. Unfortunately, market governance mechanisms are unreliable and without the help of the state, many entrepreneurs would not have the chance to get a foothold and survive in the conditions of full economic freedom. The justification of state interference would therefore be the unreliability of market processes, but also supporting solutions that contribute to a faster economic development.

As an exception to the general ban, the European Union allows public support, i.e. **selective state aid, for certain entrepreneurs**. However, state aid is subject to a number of regulations aimed at protecting the internal market, and the European Commission itself has an exclusive discretion to decide on the admissibility of public support. As a rule, projects assuming granting or changing state aid must be notified to the European Commission (EC). The President of UOKiK plays a key role in this process – he notifies the European Commission of any intention to support the company by a Polish administrative authority or other public or private entity acting under the authority of the state. A Member State may not implement the proposed measures until EC issues a final decision on compliance of the support with Community law. In 2018, **UOKiK notified EC of 22 projects with state aid**, including 12 related to aid programmes and 10 related to individual aid.

However, the aid granted as part of block exemptions and *de minimis* aid are not subject to notification.²⁶ **EC has the option of issuing regulations on the basis of which certain categories of aid are, in advance, considered compatible with the internal market and therefore do not require a prior notification and the Commission's approval.**²⁷

Forms of state aid can be split into active and passive.

An example of the former will be e.g. subsidies, while the passive aid may include tax exemptions, state participation in the costs of staff cuts, reduction of social burdens, application of preferential interest rates on loans.

Support for entrepreneurs may be granted on the basis of an **aid programme** or as **individual aid**, including individual aid for restructuring. A very important competence of the President of UOKiK is to provide opinions on projects that assume such aid. In his opinion, the President states whether the support assumed by the project meets the conditions for state aid in the meaning of art. 107 sec. 1 of the Treaty on the Functioning of the European Union (TFEU) and whether the proposed support is compatible with the internal market. In the event of non-compliance, it proposes specific solutions aiming to adapt to EU market rules. It also takes a position on the possible obligation to notify the project, i.e. to notify it to the European Commission. UOKiK's opinions are not binding, but provide directional information as to the position of EC in relation to a given project. In 2018, **UOKiK issued 27 opinions on state aid projects and government aid**, including 15 opinions on aid programmes and 12 opinions on individual aid.

The Office also **monitors the support granted to Polish entrepreneurs** – it collects, processes and transfers information related to state aid in Poland. This is done on the basis of reports on the aid granted or information on the aid that was not granted (so-called zero reports) received from the institutions providing aid. All data is collected in a special system **called SHRIMP**.²⁸

²⁶ The total value of *de minimis* aid for one beneficiary cannot exceed the equivalent of EUR 200 thousand

gross over 3 calendar years, and in the case of an entity operating in the road freight transport sector – EUR 100

thousand.

²⁷ More information about block exemptions and *de minimis* aid can

be found at: https://www.uokik.gov.pl/pomoc_de_minimis_i_wylaczenia_grupowe.php.

Review of activities

Reports on state aid

Every year, UOKiK prepares reports and performs analyses of state aid, including:

- Report on state aid granted to entrepreneurs in Poland;
- Report on *de minimis* aid;
- Report for the European Commission on state aid granted in Poland;
- The results of monitoring state aid granted to automotive companies operating in special economic zones;
- Report on the amount of state aid granted in Poland, including compensation, and other state interventions in the railway sector;
- Report on the compensation for the provision of services of general economic interest – every two years.



reports and statements on state aid in 2018

including:

2 reports submitted to the Council of Ministers: on state aid and *de minimis* aid

5 reports and statements for the European Commission: railway report, 2 automotive reports, a report on state aid granted in Poland and the report on compensation for services of general economic interest prepared every two years)

Data collection systems

- SHRIMP – System of Scheduling, Registration and Monitoring Aid – enables consistent format reporting of state aid granted and information on the aid that was not granted. In 2018, work continued on the new version of the SHRIMP system ver. 2, delivered from the resources of the Cohesion Fund PO PT 2014-2020 under an agreement with the Minister of Development and Finance. A tender was announced to select the contractor for the new system, the entities authorised to use the application were verified and their information updated. Work on the new application continued in 2019.
- SUDOP – State aid Data Access System – an application collecting data from entities providing state aid submitted to UOKiK in the form of reports.
- SARI – Electronic Reporting System – enables the preparation and submission of reports to EC.

²⁸ The competences of the President of UOKiK are regulated by the Act on

proceedings in state aid cases of 30 April 2004 (Journal of Laws of 2018,

item 362). They do not include matters related to state aid in agriculture and

fisheries.



The SUDOP State aid Data Access System, available at: <https://sudop.uokik.gov.pl> is a publicly accessible and free application containing information on all applicable aid measures (search engine 1) and their beneficiaries (search engine 2). The most commonly used module is the one allowing users to verify the *de minimis* aid limit received by a given company (search engine 3). To obtain a list of all cases of aid received, simply provide the NIP number of the beneficiary.

The data in the SUDOP application come only from the reports of entities providing aid, sent to UOKiK via the SHRIMP application.

Key cases

Notification of an individual aid project for LG Chem Wrocław Energy

The project of granting regional investment aid to LG Chem was notified to EC in 2017, and in 2018, a substantial part of the notification procedure was conducted, consisting in the exchange of correspondence with EC, numerous working meetings and teleconferences. The project involves the construction of a new plant for the production of lithium-ion batteries for electric cars in the Lower Silesian Province. As a result, about 700 new jobs will be created. The total value of the investment is EUR 315 m, with the company **being granted state aid in the maximum amount of EUR 36 mn**. The European Commission approved support for LG Chem Wrocław Energy in early 2019.

Works on the Act on transforming the perpetual usufruct right of developed land for housing purposes in the ownership right to that land

UOKiK actively participated in the entire legislative process regarding this act,²⁹ cooperating in this respect with the Ministry of Investment and Development and local governments. First of all, **the Office ensured compliance of the proposed provisions of the act with the applicable regulations regarding de minimis aid**. The act provides for the transformation of the rights to shares in perpetual usufruct to shares in the ownership title to property in respect of land developed with multi-housing buildings for residential purposes. That land was transferred to its residents, which in practice meant the liquidation of perpetual usufruct on residential land in Poland.

Development of the energy sector in Poland

In 2018, the President of UOKiK issued an opinion on the aid project, and then notified **the state aid plan for the expansion of the LNG Terminal** (LNG – Liquid Natural Gas) in Świnoujście. This is a strategic investment from the point of view of the Polish energy sector, in particular the gas fuel sector. It aims to increase the Terminal's capacity by expanding its functionality – enabling unloading of natural gas, bunkering, construction of a new position for ships, expansion of the on-shore loading system and the co-existing infrastructure. This project is co-financed by the European Regional Development Fund, through the Infrastructure and Environment 2014–2020 Operational Programme. The notification proceedings before EC continued in 2019.

²⁹ The act of 20 July 2018 on the transformation of the perpetual usu-

fruct right to developed land for housing purposes to ownership right to that

land (Journal of Laws of 2018, item 1716, as amended). The act was amended in

November and December 2018.

UOKiK's activities in 2018

Issuing opinions on state aid and government projects	Number	Notification proceedings before the European Commission	Number
Opinions issued by UOKiK, including:	27	Projects notified to EC via UOKiK, including:	22
– opinions on aid programmes	15	– regarding aid programmes	12
– opinions on individual aid	12	– regarding individual aid (including for restructuring)	10
– opinions on individual aid for restructuring	0		
		Projects approved by EC	10
		Projects withdrawn*	4
		Projects analysed by EC under the so-called preliminary examination procedure*	39
Received and analysed applications for interpretation of state aid regulations	455	Projects which were subject to a formal explanatory proceedings*	2
Analysed applications for <i>de minimis</i> programmes	1 213	Projects notified to EC via UOKiK under block exemptions, including:	37
Analysed submissions of draft government documents in terms of recognising the support as state aid	607	– regarding aid programmes	12
		– regarding individual aid	25

* The statistics also include cases reported in previous years.



Examples of opinions issued for projects or projects notified in 2018

Individual aid project for Bochnia Salt Mine

Individual aid project for CCGT Płock heat and power plant for electricity generated in high-efficiency combined heat and power generation

The draft aid programme included in the draft ordinance of the Minister of Investment and Development amending the ordinance on granting financial aid by the Polish Agency for Enterprise Development under axis I Entrepreneurial Eastern Poland, Eastern Poland 2014-2020 Operational Programme

The draft aid programme included in the draft ordinance of the Minister of Development and Finance amending the ordinance on granting aid for risk financing and for entrepreneurs starting their operations under the Intelligent Development Operational Programme 2014-2020

Draft aid programme included in the draft act amending the Act on national and ethnic minorities and on the regional language and selected other acts

Draft aid programme included in the draft act amending the Act on the social insurance system and the Act on healthcare benefits financed from public funds

Examples of proceedings before the European Commission with pre-notified or notified aid

Draft aid programme "Exemption of seafarers from income tax"

Draft programme regarding the zero rate of excise duty on natural gas (LNG and CNG) and biogas, hydrogen and biohydrogen in Poland

Amendments to the "Regional Broadband Network in Silesia" aid programme

Examples of proceedings before the European Commission regarding complaints submitted to EC (alleged help)

Aid project for Sferia

Aid project for renewable energy

Aid project in the form of property tax exemptions and reduction of perpetual usufruct fees in the area of the port of Szczecin

Work on examples of draft national legislation

Submitting comments to the draft Act on the amendment of certain acts in connection with ensuring the application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (general data protection regulation) – the purpose was to amend the act of 30 April 2004 on proceedings in cases concerning state aid by adding an article on the administration of the data of entities providing aid and aid beneficiaries

Submitting comments on the draft Act on the Platform of the Future Industry Foundation and implementing regulations to this act – its purpose is to establish a new entity that is to focus on adapting the Polish economy to the challenges of the fourth industrial revolution

Works on the Act on promotion of electricity from high-efficiency combined heat and power generation, which contained an aid programme providing for operating aid for producers of energy from high-efficiency combined heat and power generation

Works on the act amending the Act on renewable energy sources and selected other acts, which introduced a new aid mechanism for producers of electricity from renewable energy sources

1.6 Judicial practice in competition protection cases

Entrepreneurs have the right to appeal against UOKiK's decisions and lodge complaints against its decisions to the Court of Competition and Consumer Protection (SOKiK) in Warsaw. Its judgments can be appealed to the Court of Appeals in Warsaw (CA in Warsaw), and then a cassation appeal to the Supreme Court (SC).



Statistics of court judgments in competition protection cases – years 2016-2018*

	Court of Competition and Consumer Protection			Administrative Court in Warsaw			Supreme Court		
	2016	2017	2018	2016	2017	2018	2016	2017	2018
Judgments issued in cases in the area of competition protection in total	28	13	25	33	30	12	2	8	8
including related to:									
vertical agreements	3	7	11	15	4	3	1	2	0
horizontal agreements	13	5	6	4	16	4	0	1	1
abuse of a dominant position	11	1	8	12	10	5	1	5	6
control of concentration of entrepreneurs	1	0	0	2	0	0	0	0	1

* The database of judgments by SOKiK, the Court of Appeal in Warsaw

and the Supreme Court regarding the decisions of the President of UOKiK is

available at: https://www.uokik.gov.pl/baza_wyrokow.php.

Review of judicial practice on competition restricting practices and concentration controls

Judgments in two cases regarding PKP Cargo:

SC – judgment of 7 March 2018 ³⁰

SOKiK – judgment of 15 October 2018 ³¹

The verdict of the Supreme Court concerns the decision of UOKiK from 2012 imposing a fine of PLN 1.7 mn on PKP Cargo for the failure to comply with the previous UOKiK decision of 2004. For over 4 years, the company did not completely discontinue the practice consisting in abusing the dominant position and failed to introduce changes in agreements with counterparties as required by the Office. The company granted various discounts for the transport of hard coal to counterparties despite a similar turnover value and volume of transported goods. In 2016, the Court of Appeals changed the decision of UOKiK and reduced the fine to over PLN 1.4 mn. Ultimately, in its judgment of March 2018, the Supreme Court dismissed PKP Cargo's cassation appeal, considering that the implementation of UOKiK's decision required the introduction of uniform rules of cooperation in the agreements, and the company intentionally failed to stop applying competition restricting practices.

Another judgment in the case of PKP Cargo concerns UOKiK decision of 2015, in which the Office found the abuse of a dominant position by the company with a view to restricting competition. The company prevented the development of competition on the national railway market by refusing to sign the so-called special agreements with its competitors. Thus, they could not take advantage of the preferential price conditions resulting from these agreements. SOKiK dismissed the company's appeal and upheld the fine imposed on PKP Cargo in the amount of PLN 14 mn. It considered that the application of the alleged practice was evidenced by the mere fact that the company had posted on its website the contested rules for the sale of freight services. With the market position of PKP Cargo it meant that its counterparties were forced to accept these conditions without being able to negotiate them.

SOKiK – judgment of 19 October 2018 regarding distribution of watches³²

In December 2015, the President of UOKiK recognised the conclusion of an agreement, by The Swatch Group (Poland), Krakowski Salon Jubilerski W. Strojny, Filip Płonka Firma Handlowo Usługowa "Płonka," "MAX_TIME" Maciej Pałka and Vistula Group, to be a competition-restricting practice, consisting in setting minimum retail sales prices for Swatch watches. The organiser of the collusion was the Swatch Group, which had exclusive rights to introduce certain watch brands to the Polish market. The company set the requirement of applying, at a lower level of turnover (i.e. retail), a discount not exceeding a certain percentage of the value of the goods. It also acted as a point of information exchange for distributors about actual retail prices charged by the competitors. The Office ordered the companies to discontinue the practice and imposed a financial penalty on them. SOKiK changed the decision of UOKiK in relation to Vistula Group, stating that this entity discontinued the prohibited practice. In addition, it reduced the fines imposed on Vistula Group and Krakowski Salon Jubilerski W. Strojny. In all other respects, it dismissed the appeals of all parties to the proceedings and upheld the justification given in the Office's decision. The court emphasised that its purpose was to restore intra-brand competition between all distributors of Swatch Group network and creating a pro-consumer effect. The parties to the proceedings appealed against the SOKiK judgment, the case is pending.

SOKiK – judgment of 20 November 2018 in the case of the Notary Chamber in Warsaw³³

The Notary Chamber in Warsaw appealed against the decision of the President of UOKiK from December 2015, in which it was charged with concluding an agreement restricting competition on the national notary services market and was ordered to discontinue the practice. It consisted in limiting, to the notaries affiliated in the Chamber, the opportunity to participate in tenders organised on the basis of the public procurement law act. SOKiK fully upheld the Office's decision.

³⁰ Ref. No. III SK 6/17.

³¹ Ref. No. XVII AmA 45/16.

³² Ref. No. XVII AmA 18/16.

³³ Ref. No. XVII AmA 44/16.

³⁴ Ref. No. VII AGa 1160/18.

³⁵ Ref. No. VI AGa 3/18.

³⁶ Ref. No. XVII AmA 173/10.

³⁷ Ref. No. VII AGa 1028/18.

³⁸ Ref. No. VII AGa 1205/18.

CA – judgment of 25 September 2018 regarding the National Notary Council³⁴

In 2010, the President of UOKiK decided that the National Notary Council concluded **an agreement restricting competition in the national notary services market, adopting in its Notary Code of Professional Ethics the rule that a notary was allowed to open a legal office in a building that already houses another legal office, provided that a consent of the Council of the Notary Chamber is obtained**. The Office ordered the discontinuation of this practice and imposed a fine of PLN 35,114 on the NNC. The National Notary Council appealed against this decision to SOKiK, and the case was the subject of further appeals in 2014–2018. Finally, in September 2018, the Court of Appeals in Warsaw decided for the third time in this regard. In its decision on the appeal of both parties regarding the penalty, it dismissed the KRN's appeal in its entirety and partly approved the appeal of the President of UOKiK. It changed the point of the decision regarding the penalty by reducing it to PLN 26,335.50. It confirmed the practice alleged to the NNC, whose purpose and effect was to restrict competition.

CA – judgment of 27 March 2018 in the cement case³⁵

In the decision from 2009, the President of UOKiK recognised **the existence of the cement cartel**. It considered then that the following entities: Lafarge Cement, GóraŹdŹe Cement, OŹarów Group, Cemex Polska, Dyckerhoff Polska, Warta Cement Plant and Odra Cement Plant entered into agreements restricting competition on the national market of gray cement production and sale. They consisted in setting prices and other terms of sale of gray cement, sharing the market for production and sale of gray cement, and exchanging confidential commercial information. The President of UOKiK ordered to discontinue this practice and imposed a fine on the companies. Lafarge cement filed a leniency application and thus avoided financial penalties. In December 2013, SOKiK³⁶ shared the position of UOKiK, confirming the conclusion of a prohibited agreement. At the same time, it reduced fines to PLN 339 mn. As a result of the appeals from the entrepreneurs and the President of UOKiK from the SOKiK judgment of 2018, the Court of Appeals dealt with the case. **CA partially changed the appealed decision, stated the discontinuation of restrictive practices in June 2006, and reduced the fines imposed on cement plants to ca. PLN 228 500 mn.** It maintained, however, the justification for the Office's decision as to the existence of the alleged practices.

CA – judgment of 29 May 2018 in PGNiG case³⁷

The case referred to the UOKiK decision of 2013 regarding the abuse of a dominant position by Polskie Górnictwo Naftowe i Gazownictwo. It also included committing PGNiG to remove contractual provisions questioned by the Office from agreements with customers, which limited the possibility of reducing the amount of fuel and contracted power ordered for subsequent years. In October 2014, UOKiK instigated proceedings verifying the implementation of the decision in connection with suspected PGNiG's failure to fulfil its commitment. It showed that **the company had not fully complied with the terms of the 2013 decision, replacing prohibited clauses with new provisions having similar effects**. Finally, in September 2015, UOKiK imposed a financial penalty on PGNiG for each of 490 days of delay in fulfilling the obligation, which resulted in a final amount of over PLN 10 mn. The company appealed twice, first to SOKiK, which upheld UOKiK's decision in 2017, and then to the Court of Appeals. In May 2018, CA issued a judgment in which it shared the position of the President of the Office, both as to the amount and the justification of imposing the penalty for partial failure to comply with the decision of UOKiK.

CA – judgment of 4 October 2018 in Inco Group case³⁸

The case referred to the decision of UOKiK of November 2011, imposing a financial penalty of over PLN 2 mn on the company for **failure to cooperate during a control with a search**. During the control, one of the management's members intentionally deleted from the computer a file containing data that could have significant evidential value in the proceedings. The case was re-examined by the courts of first and second instance, as the Supreme Court, hearing the cassation appeal of the President of UOKiK, revoked the judgments of 2014 (SOKiK) and 2015 (CA) and referred it for re-examination by SOKiK in 2016. In October 2018, the Court of Appeals dismissed Inco Group appeal from the SOKiK judgment of July 2017, upholding the decision of the President of UOKiK. According to CA, deleting the file by an employee of the searched company indicated a deliberate obstruction of the proceedings. The court found that the financial penalty was adequate to the act committed.



Chapter 2.

CONSUMER PROTECTION

UOKiK undertakes actions that are important for protecting the interests of consumers as a whole. The basic tasks in this area include the elimination of infringements of consumer rights and control of contractual clauses. The Office ensures the safety of products and services, and the interventions and controls undertaken cover various market sectors. UOKiK's legislative activities, cooperation with state institutions, non-governmental organisations and consumer ombudsmen also serve the purpose of consumer protection. In addition, the Office monitors the system of out-of-court dispute resolution with entrepreneurs (ADR) in Poland.



JANUARY

31 January

Durable medium – the first of 11 decisions issued in 2018

Bank Pekao S.A. incorrectly informed the customers about changes in the terms of the agreement during its term. This was done only by means of e-messages sent in the electronic banking platform, which failed to meet the characteristics of a durable medium. UOKiK stated that this practice infringes collective consumer interests (Decision RBG-1/2018). The company committed to eliminate the negative effects of the infringement, including by granting public compensation to consumers. This is the first of 11 UOKiK decisions issued in 2018 regarding incorrect notification to bank customers on changes in agreements.



MARCH

1 March

ECC Polska in the structures of UOKiK

The European Consumer Centre in Poland, a member of ECC-Net network (European Consumer Centres), was officially included in the Office's structure. It deals with out-of-court resolution of cross-border consumer disputes arising from purchases made by Polish consumers from foreign entrepreneurs or foreign consumers from Polish entrepreneurs.

12 March

Commitment to compensation for failed promotion

T-Mobile may mislead consumers in advertisements of the "First real no limit" campaign for Heyah network. The company encouraged customers to use the promotional offer, hiding its limited duration and the fact that it is dependent on the granting of marketing consents and the option of receiving e-invoices. The operator will pay customers a refund of the amounts paid in excess of the price advertised, and the existing customers will pay the price of PLN 49.98, as promised in the advertisement.

14-15 March

Celebrations of the World Consumer Day

Digitisation of life and protection of e-consumer rights were the main topics of the two-day congress "Who creates digital consumers?" held on the occasion of the World Consumer Day. The organisers included: Office of Competition and Consumer Protection, Senate Consumer Protection Group and Consumer Federation. The event was held under the honorary patronage of Deputy Prime Minister Beata Szydło.

26 March

PLN 1.5 mn penalty for Twoja Telekomunikacja

UOKiK issued a decision that the company violated the collective consumer interests, as it falsely impersonated the customers' existing operator, failed to inform about the actual price of the service, and obstructed withdrawal from the agreement. The amount of the penalty was affected by the attitude of the company, who, despite the complaints received from consumers, did not change its actions.



APRIL

25 April

The first investigation regarding corporate bonds

After media reports about GetBack bonds, UOKiK instigated proceedings in which it tried to determine whether there were any irregularities in the offer and sale of these products. In addition, a control was conducted at the company's premises. The proceedings provided an impulse for the Office to take further actions in this respect in relation to GetBack as well as banks and intermediaries – new explanatory proceedings and actions relevant in the case of violation of collective consumer interests and the use of prohibited clauses in agreements.



MAY

15 May

Mystery shopper for the first time

For the first time, UOKiK used the institution of a mystery shopper as part of an investigation in a consumer case. The purpose of the intervention was to establish the true nature of meetings with consumers organised by the company. Behind the invitation to medical examinations in fact were commercial presentations at which paramedical products were offered to those attending.

24 May

The first meeting of the Working Group of the Financial Market Development Council for the review of corporate bond market regulations

About 20 institutions, chambers of commerce associating entities offering corporate bonds and associations representing individual investors take part in the group's work. UOKiK has been its member since 2018. The primary goal of this body is to develop solutions for security of trading in the corporate bond market.



JUNE

14 June

The first meeting of the National Council of Consumer Ombudsmen in the new make-up

The National Council of Consumer Ombudsmen operating by the President of UOKiK has an opinion-making and advisory role. In 2018, the rules governing its composition changed – currently, municipal and district consumer ombudsmen choose their representatives. The most important consumer issues were discussed, including GetBack corporate bonds, a bill on consumer ombudsman and the development of a model of cooperation between consumer ombudsmen and UOKiK.

28 June

Meeting of representatives of the ADR system in Poland

A cyclical meeting of representatives of all entities authorised to conduct arbitration proceedings, UOKiK, ADR/ODR Contact Point and European Consumer Centre took place at UOKiK offices. Its goal was to exchange information and conduct mutual consultations.



JULY

13 July

New Laboratories Department in the structure of UOKiK

Eight accredited laboratories became part of the newly created Laboratories Department of UOKiK, thus becoming an integral part of the Office. The purpose of this organisational unit is to increase the effectiveness of laboratories and to improve information flow between them, the management of the Office and other departments.

24 July

Decision regarding the telecommunications market – Nasza S.A.

UOKiK imposed a penalty of over PLN 1.6 mn on the telecommunications company Nasza S.A. for 3 practices that infringed collective consumer interests. When calling customers, company representatives falsely impersonated the current operator, concealed fees for unlimited calls and charged for additional services without the consent of consumers. This is the second decision of UOKiK regarding this entrepreneur – in December 2017, it was punished for using prohibited contractual clauses.



OCTOBER

10 October

Idea Bank – further actions regarding GetBack bonds

The Office instigated proceedings in which it charged the bank with the use of practices infringing collective consumer interests. They relate to misleading consumers when offering and selling GetBack corporate bonds. In addition, these products were offered in a way that was not aligned with the customers' needs.

18 October

"New deal for consumers" – a civic consumer dialogue

The European Commission prepared a package of changes called "A new deal for consumers," which are to increase the protection of consumer rights. These include online shopping, digital services, and double product

standards in different countries. These proposals were discussed in Warsaw as part of the civic consumer dialogue. This event was initiated by EC Representation in Poland and UOKiK.



NOVEMBER

23 November

Penalty for GetBack in relation to debt collection

UOKiK found that the company violated the collective consumer interests (decision RLU-02/2018) by enforcing debts from consumers. 10 practices related to debt collection were questioned, including the use of coercion and pressure, and repeated actions in court against the same consumer. The penalty was over PLN 5 mn.



DECEMBER

12 December

Entry into force of the amendment to the telecommunications law

The amended regulations introduced a new form of agreements for the provision of telecommunications services – a documentary form that does not require a consumer's signature. They also set a clear deadline of 14 days to withdraw from the agreement in the event of changes to its terms via phone or the Internet. The amendment also regulates the issue of premium-rate

services, i.e. premium text messages. UOKiK was involved in legislative work and submitted comments on the draft of the new act.

13 December

Mystery shopper in electronics and household appliances shops

This largest control, under which the Office used the institution of a mystery shopper, was carried out by 36 employees of the Office (head office and all local offices) and covered 16 largest electronics shops in Poland. The information that sellers provide customers while shopping was checked, including in relation to complaints and warranties. Voice and video recording was used. The effect of the action was collecting evidence and submitting information to entrepreneurs about the irregularities found.

15 December

New competences of UOKiK in the financial market

The changes are related to the entry into force of the amended provisions of the Act on strengthening the supervision of the financial market.¹ The President of UOKiK may impose a financial penalty on managers who intentionally infringed collective consumer interests or used prohibited clauses in their agreements. In the case of management of a company from the financial sector, the penalty may amount to a maximum of PLN 5 mn. In addition, the President of UOKiK has become a member of the Polish Financial Supervision Authority and will participate in its meetings in the advisory capacity.

19 December

UOKiK warns consumers – non-bank loans

The consumer warning issued by the Office concerned the company called Geldor, which dishonestly obtained personal data from potential borrowers and charged them with fees for submitting a loan application. The websites run by the company wrongfully suggested to the recipients that they were using the website of a lending institution.

31 December

The highest penalty in 2018 for anti-consumer practice

UOKiK imposed on Deutsche Bank Polska S.A. a fine of ca. PLN 6.98 mn for the use of 3 prohibited contractual clauses in agreements with consumers. Among others, the bank imprecisely determined the amount of foreign exchange rates and the possibility of their change. The Office banned their further use.

31 December

Launching a new register of prohibited agreement contractual clauses on UOKiK website

The register contains clauses prohibited by a final judgment of the Court of Competition and Consumer Protection. They apply only to those cases in which lawsuits were filed with SOKiK before 17 April 2016. They will be entered to the register under the same rules until 2026. The register has new functionalities and attractive graphic design. Consumers and entrepreneurs can find the clause they look for much easier, as there are more search criteria available.

¹ Act of 9 November 2018 amending some acts in relation to the strengthening

of supervision over the financial market and protection of investors

on this market (Journal of Laws, 2018, item 2243).

2.2 Practices violating collective consumer interests and prohibited clauses in agreement templates

An infringement of collective consumer interests occurs when a company's practice, contrary to the regulations or decency, affects an unlimited number of people. As a result, potentially anyone can be affected by it. In particular, it may take the form of unfair market practices, acts of unfair competition, lack of reliable, true and complete information, or the sale of financial products not adapted to the consumer's capacity or needs (called misselling).²

Consumers may often encounter contractual provisions which are unfavourable for them, and shape their rights and obligations in a way that is contrary to decency and grossly violate their interests. These **illegal clauses** are often found in agreements that consumers cannot negotiate individually. This applies to contractual clauses used e.g. by banks, telephony operators, insurance companies, developers, travel agencies, gas and electricity suppliers.

To eliminate anti-consumer practices, UOKiK constantly monitors behaviours of entrepreneurs. An equally important impulse for the Office's activities is the analysis of signals from the market participants themselves, including in particular complaints from consumers who may submit a written notification of a suspected use of prohibited practices.

² Art. 24.2 of the UOKiK act contains an open catalogue of practices infringing collective consumer interests.

³ Currently, the questioning of a prohibited contractual clause is done using the administrative path. UOKiK issues

a decision in which it may consider a given clause illegal and prohibit its use in agreements with consumers. The decisions go to UOKiK decision database available at www.uokik.gov.pl.

Proceedings instigated in 2015-2017

– on practices violating collective consumer interests



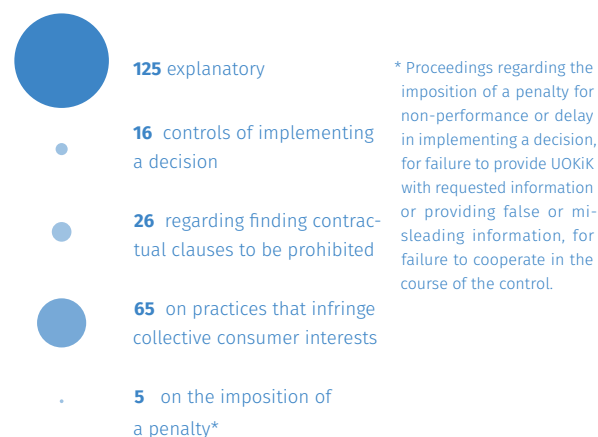
* In subsequent years, the number of proceedings on practices infringing collective consumer interests is decreasing. This is related to the change in the attitude of entrepreneurs who comply with soft calls from UOKiK, as

well as eliminate violations identified by the Office as part of explanatory proceedings and rectify their negative effects. As a result, it is no longer necessary to initiate proper proceedings in such cases.

– on finding contractual clauses to be prohibited



New proceedings



* Proceedings regarding the imposition of a penalty for non-performance or delay in implementing a decision, for failure to provide UOKiK with requested information or providing false or misleading information, for failure to cooperate in the course of the control.

2.6
Fuel quality control
system

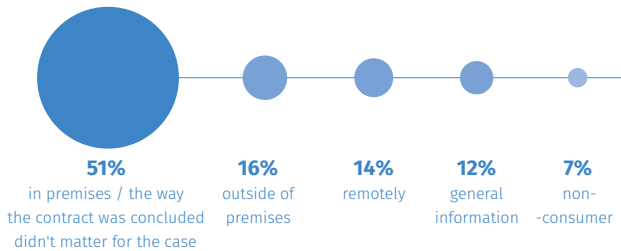
2.7
Out-of-court dispute
resolution system

2.8
Cooperation
with consumer
ombudsmen...

2.9
European Consumer
Centre

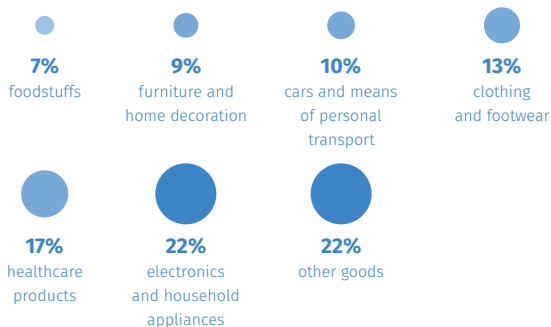
2.10
Judicial practice in
consumer protection
cases

Signals from consumers by methods of concluding agreements

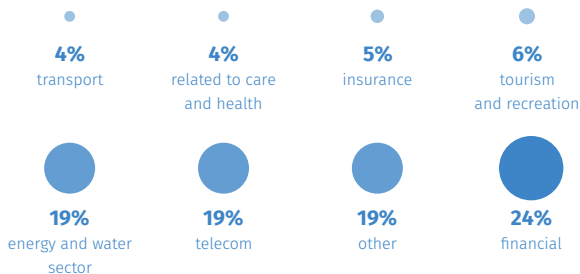


The chart above shows that a large part of cases referred by consumers to UOKiK was related to agreements made remotely and off-premises. The charts below show in which industries there were most complaints – UOKiK receives three times as much signals regarding services as those regarding sales.

Signals from consumers by industries. Sales



Signals from consumers by industries. Services



UOKiK maintains a register of abusive clauses and makes it available on the website www.uokik.gov.pl.

It contains contractual provisions that were deemed prohibited by the final judgment of the Court of Competition and Consumer Protection (SOKiK). It is a remnant of the already repealed legal order, according to which the unlawful nature of a given clause was decided by SOKiK, and based on its judgment UOKiK entered the given contractual provision in the register.³ Currently, clauses are entered in it only in cases where lawsuits were filed before 17 April 2016. In 2018, a new version of this register was launched, with additional functionalities and a more transparent layout. In addition, some entries in the register were provided with justifications of SOKiK judgments.

The Office received 5,291 signals, complaints and notifications from consumers, consumer ombudsmen and other institutions. Some of them are general questions or information, without specifying a particular company, as well as non-consumer (B2B) matters. However, over 80 pct of signals are a valuable source of information for UOKiK in relation to the market situation and the infringements committed by entrepreneurs. It is thanks to them that those areas of the market that need intervention are selected.

In 2018, UOKiK instigated 125 explanatory proceedings by operation of law, whose goal was to initially identify violations and were conducted in the case, and 91 proceedings against specific entrepreneurs: 65 proceedings on practices infringing collective consumer interests and 26 proceedings on prohibited contractual clauses.

During the proceedings, UOKiK may inspect the company's offices in order to obtain information that may constitute evidence on practices infringing collective consumer interests. In addition to standard controls, UOKiK may use the institution of a mystery shopper,⁴ which enables quick intervention and ongoing identification of infringements. Earlier, the Office must obtain the consent of the Court of Competition and Consum-

⁴ The grounds for the authority to use the institution of the so-called mystery

shopper is art. 105ia of the UOKiK act.

2.1
Calendar of events

2.2
**Practices violating
collective consumer
interests...**

2.3
Supervision over the
Trade Inspection

2.4
Product safety and
market surveillance

2.5
Laboratories

Other activities in 2018

5291

signals received from
the market

400

new soft actions to
companies

18

controls carried out in
companies

37

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

1

detailed justification of charges
in the context of proceedings
for imposing a penalty

726

significant views issued
in court cases

2

issued consumer warnings

Decisions with the highest penalties in 2018 for practices that violate collective consumer interests

PLN 9.9 mn in total penalties

RLU-2/2018:

PLN 5.05 mn

(10 penalties in total)

GetBack S.A. – for violation of consumer
rights during debt collection

DOIK-1/2018:

PLN 1.5 mn

(3 penalties in total)

Twoja Telekomunikacja Sp. z o.o. – for
misleading information about the offer
and falsely impersonating the current

PLN 1.65 mn

other penalties in total

RŁO-2/2018: **PLN 1.7 mn** (3 penalties in total)

NASZA S.A. – for falsely impersonating the current operator, misleading information about the offer
and charging consumers with the costs for additional services without their consent

Decisions issued in 2018

48

decisions on practices
infringing collective
consumer interests
including:

9,9

PLN mn
in total fines

22

commitments
accepted from
companies

8

decisions on finding
contractual clauses to
be prohibited
including:

7

PLN mn
in total
fines

4

commitments
accepted

5

decisions on
the imposition
of a penalty

Decisions with the highest penalties in 2018 in connection with finding contractual clauses to be prohibited

7

PLN mn
in total
penalties

DOZIK-9/2018:

6,98 PLN mn – Deutsche Bank Polska S.A.

RŁO-8/2018:

31 129 PLN – (4 penalties in total) – Ferratum
Finanse Sp. z o.o.

er Protection to take actions aimed at purchasing the goods and to record their course using video or voice recording devices. Next, UOKiK employees go to the controlled company and take on the role of a consumer looking for a given product or service. Thanks to this, they can check, among others, how the company offers the goods and concludes the agreement, and how it fulfils the information obligations before signing the agreement. In 2018, UOKiK carried out **15 controls** under this procedure.

The proceedings result in decisions in which UOKiK may order the company to cease unlawful activities, as well as impose a financial penalty of up to 10 pct of the turnover. There is also a possibility that the company voluntarily undertakes to change its behaviour and submits to UOKiK proposals for actions aimed at eliminating the infringement and its effects in the market. This may occur at any stage of the proceedings, in particular in response to the decision to instigate proceedings containing allegations against that entity. The Office may accept the company's commitment if it serves the actual elimination from the market of prohibited practices targeted at consumers and elimination of their continuing effects. Commitment decisions are issued in such case, whose primary purpose is to restore the state from before infringements in the market. In 2018, UOKiK accepted **22 commitments from entrepreneurs**.

In addition to imposing a financial penalty on a company, UOKiK may include in its decision a special instrument, which is public compensation.

It has the form of the obligation imposed by UOKiK to remove the effects of violation of consumer interests or the company's voluntary commitment to take the actions with such a purpose.

Example: free access to selected services of the company, refund to consumers, the option for consumers to recover an insurance premium.

PUBLIC COMPENSATION

is a type of consumer benefit, i.e. benefits for the consumer resulting from UOKiK decision.

Sometimes, it is more effective than initiating proceedings of the Office to as the company to discontinue using a given practice or prohibited clauses. These types of actions, i.e. soft calls,⁵ are used especially in relation to less harmful behaviours and allow them to be eliminated from the market faster. The company may then present its position in the matter by the deadline indicated by UOKiK. In 2018, the Office applied **400 soft calls** to entrepreneurs.

Examples of UOKiK soft calls in 2018 that brought positive effects

To PKO BP S.A. regarding powers of attorney

According to information received from the Financial Ombudsman, Powszechna Kasa Oszczędności Bank Polski S.A. did not recognise the typical written form of the power of attorney granted to professional proxies, e.g. attorneys or legal advisors. The Bank required them to be in the form of a notarial deed or with a signature authenticated by a notary. In addition, it made it difficult for the heirs to obtain funds accumulated by the testator in a deposit or bank account, despite the fact that they had valid court decisions on the division of the heritage. The company also required the presentation of an abridged copy of the death certificate. As a result of the Office's intervention, it changed the procedures and template agreements regarding these two issues.

To Alior Bank S.A. regarding powers of attorney

The bank made it difficult for consumers to act through proxies. It demanded that each instruction presented by the person possessing the power of attorney should be additionally confirmed via phone with the principal. After UOKiK's action, the bank changed its regulations. Currently, the bank contacts the consumer only once to confirm that such power of attorney has been granted. Subsequent instructions placed by the consumer's attorney are carried out automatically.

⁵ Soft calls are regulated by art. 49s of the UOKiK act.



To PKO BP S.A. on offering long-term products to senior citizens

As part of the investigation, UOKiK asked the bank not to offer to seniors' savings and investment products that did not meet their needs. They required many years of saving, including capital for retirement, consisting of making significant payments monthly, even for a period of 15 years.

To Santander Consumer Bank S.A. on the payment of insurance in the event of the death of a senior citizen due to natural causes

As a result of UOKiK's statement, the bank undertook to pay insurance from its own resources in the event of the death of the insured senior due to natural causes. So far, this insurance has been offered to consumers along with a loan for the purchase of goods and services. In the case of seniors, it was paid by the insurer only in the event of death resulting from an accident or a traffic accident.

To ITI Neovision S.A. on the method of presenting the promotion on the website

The description of the services in the provider's offer on the website did not indicate how long the consumer could use them as part of the "free" promotion and what one month of the agreement means. The company has improved communication on the site.

In 2018, UOKiK issued two consumer warnings:

9 May 2018

Piotr Kopczyński Twoje Finanse from Wrocław

The company was a loan broker operating in Lower Silesia. Its practice was to mislead consumers as to the actual cost of a loan. It could conceal the fact that a part of the debt repayment was allocated to its remuneration as an intermediary. In addition, the offers of Twoje Finanse often failed to be adjusted to consumers' financial capabilities and usually generated higher costs than expected. The services were advertised with the following slogans: "The bank refused you a loan? Come to us," "Low instalments, the cheapest offers without BIK checks," "No age limits, No hidden fees, No guarantors," "Accelerated procedure." UOKiK found that about 400 people could be affected by these activities of the company.

19 December 2018

Geldor (Karwot Artur GELDOR in Rybnik)

The company runs many websites suggesting the possibility of obtaining non-bank consumer loans. These websites, through their appearance and marketing message, could untruthfully suggest to the audience that they use a website of a lending institution. Meanwhile, the company is not a lender but an entity which collects personal data from potential borrowers and collects non-returnable fees related to the loan application procedure (including the requirement to send premium text messages).

UOKiK also issues **consumer warnings** about anti-consumer behaviour of the company and its likely effects. The warning is published if the information gathered in the proceedings indicates that there is a particularly justified suspicion that the company is using an illegal practice that may expose a wide range of consumers to significant financial losses or other adverse effects. Warnings are made public, and posted on the Office's website.

A very important competence of the Office is to issue **significant views in court cases regarding consumer protection**, if it is in the public interest. This is the written position of the President of UOKiK, which presents arguments and views important for a given dispute, based on a specific factual and legal status. Its essence is to help a general court in a comprehensive examination of a case by transferring specialised knowledge from UOKiK. Importantly, the Office does not Act on behalf or on the side of either party to the dispute. Any person whose case is decided by a court can request the Office to present an important view on the case.

In 2018, the President of UOKiK presented **726 opinions**, most of which, as in previous years, concerned clauses used by **banks in loan agreements and mortgage loan agreements in Swiss francs (CHF)**. In particular, they referred to the insurance of a low own contribution, the rules for determining the loan amount and the amounts of loan instalments based on exchange rates, as well as generally set out the premises for changing the interest rate. The second category of cases included life insurance agreements with insurance capital fund. In this case, the issue of invalidity of the declaration of entering in an insurance agreement and early termination or resignation of the agreement aroused controversy. Unfortunately, the scale and social consequences of the phenomenon of the use of unlawful contractual provisions banks and insurance companies in relationships with consumers does not decrease.

Examples of clauses used in credit agreements, considered by the President of UOKiK to be prohibited as part of the presented significant views⁶

on indexation

"BRE Bank S.A. grants the Borrower, at his request, a mortgage loan intended for the purpose specified in § 1 sec. 1, hereinafter referred to as the Loan, in the amount specified in § 1 sec. 2, indexed to the currency buy rate in CHF according to the exchange rate table of BRE Bank S.A. The loan amount expressed in CHF is determined on the basis of the currency purchase rate in CHF from the BRE Bank S.A. exchange rate table as of the day and time the loan was made available."

(clause used by BRE Bank S.A., currently mBank S.A.)

"The amounts of repayment instalments of the Loan indexed to a foreign currency are specified in a foreign currency and repaid in PLN, converted at the currency sale rate in accordance with the Table applicable on the day preceding the instalment repayment day specified in the Agreement"

(clause used by Euro Bank S.A.)

on interest rate change

"The interest rate applicable to the Loan may be changed if the reference interest rate determined for the relevant currency changes or financial parameters of the money and financial market in the country (or European Union countries) whose currency underlies the indexation change"

(clause used by BRE Bank S.A., currently mBank S.A.)

"The decision on determining the change in the interest rate on loans based on a variable rate and their amount and change is made by the Bank's Management Board"

(clause used by Santander Consumer Bank S.A.)

on low own contribution

"Additional collateral for the loan until the balance of debt under the granted loan equals to or is lower than PLN (...) Constitutes insurance for mortgage loans with a low borrower's own contribution on the basis of an agreement concluded by Bank Millennium S.A. with (...).

The borrower is obliged to reimburse the Bank for insurance costs in the amount of PLN (...) for the first 36-month insurance coverage period.

⁶ The President of UOKiK presented its position regarding the clauses used by banks in loan agreements in three general essential views on the matter

available at www.finance.uokik.gov.pl:
• Position of the President of UOKiK regarding indexation clauses,
• Position of the President of UOKiK re-

garding clauses specifying the premises for changing interest rates,
• Position of the President of UOKiK regarding the clauses related to low own

contribution insurance.

If, within the 36-month insurance coverage period, the debt balance under the loan does not become equal or lower than PLN (...), the Borrower is obliged to reimburse the insurance costs for the next 36-month period of insurance protection granted to the bank by (...), of which the Borrower will be notified by the Bank in writing."

(clause used by Bank Millennium S.A. with registered office in Warsaw)

Review of activities

Telecommunications services – further decisions

The issue of violations in the telecommunications market is constantly coming back in UOKiK's decisions. They often consist **in misleading consumers about the offer and falsely impersonating the current operator**.

This practice was questioned by UOKiK in March 2018, recognising in the decision,⁷ that Twoja Telekomunikacja (TT) infringes collective consumer interests and ordered its discontinuation. The proceedings against the company resulted from over 600 complaints received by the Office from consumers, consumer ombudsmen and fixed network operators. TT employees visited consumers at home or called landline phones, urging them to use the new offer, reduce their subscription or carry out the digitisation process. These were often elderly people who were not aware that by signing the documents they would give up their current telecommunications operator. They were also not informed that the promotional subscription would only be valid for two months. Consumers did not receive information about the possibility of withdrawing from the agreement, the withdrawal

form, price list, and even the agreement itself. There was also a situation when employees of the company decided for the consumer about additional services and ordered a more expensive subscription without their consent. UOKiK imposed a fine of PLN 1.5 mn on Twoja Telekomunikacja. Its amount was influenced by the fact that the company, despite numerous complaints, did not give up anti-consumer practices. The decision is not final, as the company appealed against it to the Court of Competition and Consumer Protection.

Nasza S.A.,⁸ which offers fixed-line telephony services, has also been fined for **falsely impersonating the current operator**. The company received almost 800 complaints from UOKiK and consumer ombudsmen. Most of them came from the elderly. Even in 2017, the Office issued a consumer warning regarding unfair practices of this company, as well as a decision on the use of prohibited contractual clauses.⁹ Finally, in July 2018, UOKiK recognised the activities of Nasza S.A. to be infringing collective consumer interests and fined them almost PLN 1.7 mn. **The allegations against the company concerned misleading consumers** by suggesting that the proposed reduction of the subscription comes from the current operator. The consultants also concealed the fact that unlimited calls are charged extra and are not included in the subscription. In addition, it turned out that the new agreement included other costly services, e.g. presentation of the caller's number, or a printout with a list of connections. Representatives of Nasza decided to activate them without the knowledge and consent of the consumer. The decision is not final and the company appealed to the court in this case.

Examples of UOKiK's activities regarding irregularities in concluding agreements for the provision of telecommunications services:

7 June 2018

initiation of proceedings against Nowa Telefonnia, allegation: impersonation of the current operator

31 August 2018

two proceedings against Telekomunikacja Stacjonarna instigated, allegations regarding violation of collective consumer interests: impersonation of the current operator, charging the consumer an activation fee and a penalty for breaching the agreement, the second proceeding concerns finding 4 clauses to be prohibited

⁷ Decision DOIK-1/2018.

⁸ Decision R&O-2/2018.

⁹ Decision R&O-9/2017. The company was fined over PLN 170 thousand. An

appeal was filed in the case.

In 2018, UOKiK also **controlled the method of collecting debts that resulted from unfair practices**. One Debt Partners, against which the Office instigated proceedings, collected liabilities from persons who had been previously misled by the telecommunications operator PGT. This company operated under the brand of “Telefonia Polska Razem” and impersonated the current operator of a consumer. These activities were recognised by UOKiK in December 2016 as practices violating collective consumer interests. According to the Office, the actions of One Debt Partners were inconsistent with decency, as the buyer of debt should find out in advance how it was created. Another questioned practice was placing in the calls for payment warnings about the intention to forward data on the debt to InfoMonitor Credit Information Bureau and not informing about the option of raising an objection to it. In addition, the company pursued claims despite having simultaneously filed a lawsuit for their payment. The proceedings were continued in 2019.

Another problem affecting buyers of telecommunications services is **the collection, by the operator, of fees for services automatically activated when signing the agreement**. This applies to additional items not included in the basic fee, regularly paid to the operator, for which consumers have not expressly agreed. Such actions, detrimental to collective consumer interests could be used by Polkomtel, Plus network operator. In April 2018, UOKiK instigated proceedings in this case against the company, accusing it of using nine practices infringing collective consumer interests. According to the Office’s information, the company could charge additional fees for nine services, e.g. “Czasoumilacz” or “Bezpieczny Internet,” which consumers did not expressly consent when signing the agreement. The prices of services ranged from PLN 2 to PLN 20 a month, they were of entertainment nature or e.g. related to security. For the first month or two, they were free, after which the consumer had to resign from using them, or pay additional fees. Pursuant to the provisions of the Act on consumer rights,¹¹ the company should obtain, at the latest when the consumer wishes to be bound by the agreement, his/her explicit consent for any additional payments that goes beyond the agreed remuneration for the main contrac-

tual obligations of the company. In addition, in the case of Polkomtel’s offer, information on additional services may have been contained in templates separate from the agreement document itself, i.e. promotion regulations. At the time of signing the agreement, consumers, on the other hand, accepted the content of the general statement indicating that they had read the documents constituting the agreement, unaware of the fact of launching individual services or the related fees. UOKiK’s proceedings against Polkomtel are continued in 2019.



The final decision of the President of UOKiK is a preliminary ruling.

This means that the findings of the Office regarding the fact of using the practice by a given company are binding for the court. It will be helpful for those consumers who have used the same services of this entity, demanded the return of wrongly collected fees, and the company rejected their complaint. Now they want to assert their rights in court against it. UOKiK’s decision may also be referred to when filing complaints with this company.

The proceedings and decisions against Polkomtel are part of **the analysis of the telecommunications services market** conducted by UOKiK **in terms of companies’ compliance with the provisions of the Act on consumer rights**. As part of these activities, in December 2016, the Office imposed a fine of PLN 15 mn on T-Mobile Polska¹² for applying a practice infringing collective consumer interests. It consisted of charging fees for additional services without the express consent of consumers (e.g. “Granie na czekanie,” “Szafa gra,” or “Prenumerata”). Consumers only signed a general statement regarding the terms of the agreement concluded and services rendered on the basis thereof. Meanwhile, the consumer’s consent for additional payments should be expressed separately for each service and come down to saying “yes” or “no” with the information on the rules of using the services, their costs and their duration. Effective actions taken by the company led

¹⁰ Decision RPZ-10/2016.

¹¹ The Act on consumer rights of 30 May 2014 (Journal of Laws of 2014, item 827).

¹² Decision DDK-20/2016.

to the abandonment of additional fees, which resulted in a reduction of the fine to PLN 15 mn. An appeal in the case was filed with SOKiK.

Misleading telecommunications ads

UOKiK's practice shows that **frequent irregularities in the telecommunications services market occur already at the pre-contractual stage**, namely when informing about the offer via marketing messages. In 2018, the Office questioned the reliability of T-Mobile advertising campaign regarding Heyah network, which was presented among others on television, radio and the Internet under the slogan "The first real no limit." The advertisements encouraged consumers to take advantage of unlimited national phone calls, text messages, mms messages and the Internet in the Smart XL package intended for subscribers of Heyah network. The operator displayed a promotional amount of PLN 49.98, while hiding the fact that it is valid only for the first 3 months of the agreement and only on condition that the consumer grants marketing consents and wishes to receive electronic invoices. UOKiK stated that Heyah ads could mislead consumers as to the total, actual price of services from the promotional offer. The company's activities were considered a practice that infringed the collective consumer interests.¹³ T-Mobile avoided financial penalties because it stopped broadcasting the challenged ads and committed to eliminate the effects of its practices. As a compensation, the operator automatically reduced the existing subscription fee to PLN 49.98 until the end of the agreement. In addition, all consumers who took advantage of the promotion could receive a refund of previous payments exceeding the price from the advertisement. The company also undertook to publish statements in the mass media and UOKiK's decisions on its websites.

Amendment of the telecommunications law

In December 2018, new telecommunications regulations,¹⁴ entered into force, which brought several practical benefits to consumers using the services of mobile networks, fixed telephony, cable and satellite television.

First of all, **a new form of agreement for the provision of telecommunications services was introduced**. In addition to the existing written and electronic forms (using a special form), a documentary form appeared. This means that to conclude the agreement, it is sufficient to accept its terms in a way that identifies the consumer, e.g. by e-mail, text message, or by phone during a conversation. It is no longer necessary to sign the documents. On the other hand, the company is obliged to provide the consumer with the content of the agreement and the subscriber's declaration of binding conditions on a durable medium. The form of the agreement is chosen by the customer from among those that the company offers.

The amendment also **removed the existing discrepancies regarding withdrawal from the agreement in the event of a change in its terms via phone or the Internet**. They resulted from a different approach to this issue in the provisions of the telecommunications law and the Act on consumer rights. The consumer is currently entitled to withdraw from the agreement within 14 days of its amendment, even if the operator has already started the services. The company must confirm to the consumer the amended terms of the offer on paper or a durable medium before it makes the final decision to be bound by the agreement.

The changes in the telecommunications law **also apply to premium-rate services, i.e. premium text messages**. **In recent years**, UOKiK received a lot of complaints from consumers who received messages regarding, among others fake shopping vouchers for branded shops, contests with non-existing prizes, divination. The new regulations set PLN 35 as the default amount up to which the subscriber may incur the costs of premium text messages in a given billing period. The operator must also enable them to choose another threshold from at least four thresholds: PLN 0, PLN 35, PLN 100, and PLN 200. Before a premium service can be provided, the provider must obtain the consumer's consent. The subscriber can also completely block premium services, including incoming calls, even if they are free.

¹³ Decision RKR-1/2018.

¹⁴ On 12 December 2018, the amended provisions of the Telecommunica-

tions Act of 16 July 2004 entered into force (Journal of Laws 2004 No. 171 item

1800, as amended).

Fictitious online competitions

In decisions issued in the case of Karcz-Provider* and Leaders**, UOKiK questioned the practices regarding payments made using premium text messages. The companies operated websites which promoted their HotAwards/HotPrizes websites, suggesting that consumers could win attractive prizes in competitions.***

* Decision RKR-4/2018 is final.

** Decision RKR-5/2018 – the company appealed against it.

*** For more details, please see the press release:
https://www.uokik.gov.pl/aktualnosci.php?news_id=15126.

Monitoring of sales presentations

As in previous years, UOKiK dealt with unfair sales presentations in 2018. Consumers, most often older people, are invited via phone for free medical tests or free rehabilitation, while in fact they fall victims to manipulation from dishonest entrepreneurs. During such meetings, they are urged to buy expensive products, dietary supplements or packages of medical services.

Misled by CMSE Sp. z o.o.

(formerly: CMSF Sp. z o.o. or Centrum Medyczne Św. Franciszka)

The company invited seniors for a free pulse oximeter test. After conducting them, the company's representatives informed consumers about their poor health and offered medical packages, which cost from PLN 4 thousand to 16 thousand. This often meant that a senior would need to incur a loan. Many people decided to sign agreements with the company, and then they learned that in the case of health services they are not entitled to withdraw from the agreement. The Office received many complaints from consumers who reported that they had been misled, because many of them did not suspect the true commercial purpose of the meeting. Doubts were also raised by the reliability of tests carried out during the demonstrations and the diagnosis of the seniors' health. After collecting evidence, also under the mystery shopper procedure, it was decided to initiate 2 proceedings against the company: for violation of collective consumer interests and the use of prohibited contractual provisions. UOKiK also published a warning on the company's practices on its website*.



* For more details, including information about the charges against the company, see the press release:
https://www.uokik.gov.pl/aktualnosci.php?news_id=15128.

The Office carried out monitoring of sales presentations during which off-premises agreements are concluded. Thanks to cooperation with consumer ombudsmen, province trade control inspectorates and owners of venues where demonstrations took place, information was collected about over 1,300 demonstrations throughout Poland, nearly 130 entrepreneurs conducting sales and 200 places where such meetings were most often held. The institution of mystery shopper turned out to be a very helpful tool in identifying unfair practices in this area. It made it possible to obtain valuable information at the source, i.e. in the place of rendering services by the company. As a result, the Office obtained evidence which was then used in proceedings regarding practices infringing collective consumer interests.

In decisions issued in 2018, UOKiK questioned a number of violations, which most often consisted of: concealing the commercial purpose of the meeting, misleading as to the state of health of test participants and the properties of the products and services presented, failure to accept withdrawals from the agreement for the purchase of a package of medical services, and failure to provide consumers with a copy of the agreement.

Unfair practices of entrepreneurs when concluding agreements outside the premises were the subject of the educational campaign "Seniors, be careful!" delivered by UOKiK since March 2018. The details of the campaign can be found in the section on information and education from UOKiK.

Direct marketing

Telecommunications law prohibits contacting the consumers by phone for marketing purposes without their prior consent. This applies not only to the desire to present the offer, but also to announcing it or examining the consumer's needs. Consent to receive commercial information cannot be obtained at the beginning of a telephone conversation. It should be clear and unambiguous – the consumers must know to whom and

for what purpose they provide it and in what form they want to receive offers. The consent can be withdrawn at any time. Meanwhile, representatives of ACS Medica called numbers from a nationwide telephone book and invited subscribers to sales presentations without their prior consent for commercial contacts. In 2018, UOKiK issued a decision¹⁵ regarding this company, in which it questioned the method of inviting consumers to presentations. According to the Office, ACS Medica practice violated the collective consumer interests. The company abandoned its use, which gave rise to the reduction of the financial penalty to almost PLN 6,5 thousand. The decision is final.

The lack of prior consent of the consumer to conduct marketing conversations is one of the charges against entrepreneurs organising unfair commercial presentations. There are ongoing proceedings against them regarding violation of collective consumer interests.

Examples of decisions and proceedings of UOKiK regarding unfair presentations:

Decision RPZ-10/2018 re. Promed (formerly NMedical, NovuMedica), fine: ca. PLN 370 thousand – appeal was filed.

Decision RPZ-12/2018 re. ACS MEDICA, penalty: ca. PLN 72 k, the company was obliged to notify the decision of UOKiK to all consumers to whom it sold products in the period March 2017 – December 2018, no appeal was filed.

Proceedings against Vitaldream and R.A.M. Polska – both companies sold Magnetic Field Applicator during sales presentations. The Office's doubts were raised by the promotional offer of this device and its wide range of use. Actions towards companies are continued in 2019.

Proceedings against Centrum Medyczne Rehabilitacji i Fizjoterapii (formerly MedicalM2) – the allegations relate to: the company hiding the true purpose of research that ended with the sale of medical packages; unjustified information on ill health, pressurising to conclude agreements, refusal of the right to withdraw from the agreement.*

* For more details, go to the press release at: https://www.uokik.gov.pl/aktualnosci.php?news_id=14882.

¹⁵ Decision RPZ-14/2018.

Unfair advertising at the end of the school year

In 2018, a decision was made regarding the advertising message to the customers of Media Expert shops. Terg, the owner of Media Expert shops, organised the promotional campaign “We pay for grades” on the occasion of the end of the school year in 2017. Its ads appeared, among others on the radio. The audience had the opportunity to find out that they would get cash or a discount on the day they came to the shop with a certificate showing good grades. The customer was to receive PLN 6 for each “excellent” grade and PLN 5 for “very good” grade. The spot omitted important details for consumers – in order to take advantage of the promotion, you had to do shopping for at least PLN 300, and the discount was only valid for the next visit to the shop. Such a message could mislead consumers. UOKiK issued a decision in which it accepted the company’s commitment to award additional PLN 60 to customers who took part in the “We pay for grades” campaign. The company declared that it would inform consumers about the decision and compensation through its website, an ad in a nationwide newspaper and e-mails to people who agreed to the processing of personal data.

Development services

UOKiK was informed by a consumer that Varitex developer, delivering Srebrna Ostoja investment in Konstantynów Łódzki, **does not comply with its information obligations**. The case was related to the failure to inform home buyers about the purpose of neighbouring plots of land for service buildings and production facilities, warehouses, and that a warehouse and logistics complex, and production facilities are planned within a radius of one kilometre. For many customers, this meant inconvenience related to the noise and the traffic. After initiating proceedings against the developer, the Office confirmed that the information prospectus lacked details about the investment’s environment. According to the so-called development act¹⁷ the prospectus must contain information on investments that are envisaged within one kilometre radius. In addition, there is a section describing the spatial development plan for neighbouring plots. A penalty of over PLN 54 thousand was imposed on Varitex.¹⁸ The company discontinued the questioned practices. The decision is not final and an appeal has been filed.

Electricity market

Consumers should know the final cost of a service including all taxes, so contractual rates apply to them. Energy Match used a different practice, which to contractual prices indicated in the price list, invoices and forecasts of electricity consumption added the equivalent of VAT. The company found inconsistencies between the price list and settlements, but changed the template agreement only for new customers. It did not propose signing annexes to the existing customers and continued to unlawfully add VAT amounts on invoices. UOKiK found these activities to be unfair market practice¹⁹ and imposed on the company a fine of over PLN 103 thousand. In addition, Energy Match had to inform consumers about the decision and the possibility of pursuing their claims in court, e.g. refunding overpayments. The Office’s decision is final.

Banking services market – prohibited clauses in loan agreements

UOKiK monitors the banking services sector in terms of prohibited contractual clauses in agreement templates, regulations and annexes to mortgage loans denominated in foreign currencies. The most frequently challenged clauses refer to, among others, an imprecise method of calculating foreign exchange rates and the so-called currency spread.²⁰

In 2018, Deutsche Bank Polska S.A. was fined with the highest penalty of almost PLN 7 mn for similar practices. **UOKiK found that three clauses used by this entrepreneur in agreement templates, annexes and regulations of loans denominated in Swiss franc or euro had been prohibited.**²¹ These provisions relate to the calculation of exchange rates and rules of performing loan agreements by consumers. The bank set foreign exchange rates based on “the average exchange rate from the forex market, at the latest by 9.30 a.m.” It was not known on which website consumers can view this data, also, the exact time the bank took into account when setting the exchange rate was unknown. Consequently, customers could not independently estimate the rate at which the bank would

¹⁶ Decision RPZ-7/2018.

¹⁷ The Act on Protecting the rights of buyers of apartments or single-family houses (Journal of Laws, 2011, No. 232,

item 1377 as amended).

¹⁸ Decision RŁO-4/2018.

¹⁹ Decision RŁO-5/2018.

²⁰ A currency spread is the difference

between the currency purchase rate and sale rate. For consumers who repay their loans in a foreign currency, a higher spread means higher cost of

the loan.

²¹ Decision DOZIK-9/2018.

calculate the instalment. Two other clauses regulating the issue of changes in foreign exchange rates were also considered illegal. Based on one of them, the entrepreneur could change the amount of currency spread once a month, when certain factors occur. It did not inform, however, to what level it can increase it and at what specific moment. The remaining clauses recognised the bank's right to change the level of fees and commissions once a month based on and in relation to 8 factors, e.g. an increase in inflation rate. In addition to the financial penalty for Deutsche Bank Polska S.A., an obligation was imposed to notify consumers of the decision of UOKiK in a letter. The decision is not final and the bank appealed against it. In response to complaints from consumers, the Office instigated further 8 proceedings to check how banks set exchange rates. These activities are continued in 2019.

Deutsche Bank Polska S.A. was also subject to other proceedings of UOKiK in the matter of declaring the clauses of an agreement template to be illegal. In response to signals from consumers, **in 2018, the Office tested the practice of 15 banks regarding the collection of fees for issuing certificates regarding mortgage loans in Swiss francs.** These documents relate to e.g. the amount of interest paid, repayment history, and amount of capital. They are required by courts to determine the amount of the consumer's claims in a dispute with the bank. The first allegations were made against Deutsche Bank Polska S.A., which collected high fees from customers for issuing certificates of loan repayment history. The Office's doubts were raised by the method of calculating fees, according to which the bank made the amount of costs dependent on the period for which the certificate was to be issued. In the case of loan agreements or mortgage loans, in which their duration is long-term, fees calculated this way may generate a very high financial burden for consumers and unjustified income for the bank. According to the Office, they were not adequate to the costs incurred by the bank when preparing the documents. The proceedings are continued in 2019. The provisions regarding fees applied by other banks were verified in the so-called soft actions.

Banking services – other decisions

The practice of Deutsche Bank Polska S.A. consisting in **charging consumers increased fees for the account associated with the loan agreement and preventing them from resigning from this account without cost** lasted for at least 6 years. The bank's customers, taking a loan or mortgage loan a few years ago, opened settlement and savings accounts to service them. In return, they could receive a lower margin on a loan. In the meantime, the company increased the fees for account maintenance. Their holders who wanted to opt out of this product and terminate the agreement were exposed to negative financial consequences in the form of increased interest rates on the loan. According to UOKiK, the bank must allow the consumer to terminate the agreement without additional costs. In the decision,²² it imposed an obligation on the bank to compensate current and former customers for the loss. The bank is to refund the fees charged for keeping the account, change the account type for any account offered by the bank for free, and include free annexes to account maintenance agreements. By fulfilling the undertaking, the company could avoid a financial penalty.

The Office received many complaints about banks that could mislead consumers **by charging them for payment cards, despite the fact that consumers made card payments in the required number and value of transactions in a given settlement period.** In connection with these signals, the Office checked the practices of 18 banks in 2017 and 2018, of which 13 raised reservations. As a result of soft calls, six banks changed their practices voluntarily, and in relation to further six financial institutions, UOKiK issued decisions²³ requiring them to reimburse card fees and change transaction settlement models. The last proceedings and the final decision²⁴ concerned Alior Bank S.A. The model of calculating fees for servicing debit payment cards was questioned in it. It turned out that the bank cancelled payments provided that it posted a certain number of non-cash transactions or transactions at a specific value using the card. In practice, these operations were often carried out at the

²² Decision DOIK-3/2018.

²³ For more details on the proce-

edings and decisions, go to the press release at: <https://www.uokik.gov.pl/>

aktualnosci.php?news_id=14035.

²⁴ Decision RŁO-1/2018.

end of the month, and only settled at the beginning of the next one. Thus, posting the transaction was not the same as completing it. Alior Bank S.A. took on the commitment to change the practice and remove the effects of violations by returning monthly debit card fees to customers, publishing the content of UOKiK's decisions on its website and posting the statement in branches. The company introduced a new transaction settlement model, which takes into account the moment of their completion rather than posting by the bank. The decision is final and, due to its obligatory nature, the Office did not impose a financial penalty on Alior Bank S.A.

Durable medium – subsequent decisions

An important issue, present for several years in UOKiK's decisions, is **how banks inform their customers about changes in the terms of financial agreements and use a durable medium for this purpose**. Most often, the modifications concern increases in tables of fees and commissions. In previous years, the Office accused banks that when introducing changes they did not inform consumers about the legal basis and the actual circumstances from which they arise. In addition, it challenged the fact that the proposed changes were only available in the internal electronic banking system, which does not currently meet the characteristics of a durable medium. The company can delete information important for the customer at any time, and such e-system does not guarantee access to information after terminating the agreement. In addition, the consumer would have to keep track of the messages it receives as part of this website in order to be able to react to changes in the agreement.

According to the Office, the bank should provide consumers with information about changes in the agreement using a durable medium. It is e.g. a letter in traditional or electronic form, information saved on USB memory or CD, as well as an e-mail if it contains all the required data. Thanks to this, the consumer will have access to information in the future and will be able to display it in an unchanged form. The form of communication between

the bank and the consumer should also take into account the needs and technical capabilities of the addressees.

In decisions issued in 2018 in relation to Alior Bank S.A.,²⁵ Banku BPH S.A.,²⁶ Banku Millennium S.A.,²⁷ BZ WBK S.A.,²⁸ Deutsche Bank Polska S.A.,²⁹ Getin Noble Bank S.A.,³⁰ Idea Bank S.A.,³¹ ING Banku Śląskiego S.A.,³² Pekao S.A.,³³ PKO BP S.A.,³⁴ Plus Bank S.A.,³⁵ UOKiK accepted the commitment from banks to adapt their electronic banking systems to the requirements of a durable medium. In addition, entrepreneurs offered compensation to their customers as they introduced increases in fees without the form required by law. To this end, they proposed to consumers annexes to the agreements, in which they confirmed the current level of fees and commissions, and made settlements with the consumers who were charged increases. Banks returned overpayments and also provided free services for a certain period of time, e.g. withdrawals from ATMs. All decisions are final.

Corporate bonds of GetBack S.A.

CORPORATE BONDS

are securities issued by enterprises to raise operating capital. This document states that the issuer (company) has a debt to the buyer (bondholder). Bond buyers are entitled to receive interest and return on capital upon redemption of the bond by the issuer.

In April 2018, UOKiK took action immediately after the first media reports about possible irregularities in the offer and sale of GetBack corporate bonds. In this case, explanatory proceedings were instigated and a control was carried out at the offices of GetBack. From May, complaints began coming to UOKiK from persons who may have been misled when purchasing these bonds or who were offered products that did not meet their needs. From their analysis it appeared that **they were not typical investors, but consumers who set aside savings and then were persuaded to buy corporate bonds, although they were not interested in such risky financial instruments**. The bonds were offered directly by GetBack

²⁵ Decision RBG-6/2018.

²⁶ Decision RBG-13/2018.

²⁷ Decision RBG-7/2018.

²⁸ Decision RBG-9/2018.

²⁹ Decision RBG-4/2018.

³⁰ Decision RBG-12/2018.

³¹ Decision RBG-2/2018.

³² Decision RBG-10/2018.

³³ Decision RBG-1/2018

³⁴ Decision RBG-11/2018.

³⁵ Decision RBG-8/2018.

as well as banks, brokerage houses and brokers. The information provided indicated that misselling could also occur during sales, i.e. persuading consumers to buy a product not suited to their needs.

In total, the Office instigated four explanatory proceedings to determine the rules for offering and selling GetBack corporate bonds. In addition, in two cases UOKiK brought charges against companies. The first concerns the suspicion that Idea Bank used practices that infringe collective consumer interests, including, first of all, misleading consumers that GetBack bonds are a safe product that guarantees profit, and their sale is limited. In addition, company representatives urged customers to buy bonds that did not meet their needs.

The subject of the second proceeding was the use by Polski Dom Maklerski (PDM) of the provision in the “Offer Acceptance Form for Purchase of GetBack (...) Series Bonds,” which PDM sent customers by e-mail to be filled. Pursuant to the clause, the buyer certifies that it did not hear or receive any information that would contradict what is written in the “Bond Purchase Offer or Bond Issue Terms.” The customer could not send the form without accepting this point, even if it was inconsistent with the facts. According to UOKiK, it could be an illegal contractual provision which obstructed consumers from pursuing claims.

The proceedings are continued in 2019.

Debt Collection

In 2018, UOKiK issued two decisions regarding unlawful debt collection practices – they were addressed to GetBack S.A.³⁶ and Vex Sp. z o.o.³⁷ Many consumer complaints were received by the Office against the companies’ activities. In both decisions, infringements of collective con-

sumer interests were found, and orders to cease unfair practices and financial penalties were imposed.

In the proceedings against GetBack, 10 practices related to the method of debt collection were questioned. The company used coercion and pressure, sending text messages to consumers repeatedly and calling them with reminders and contacting their family and neighbours. The letters addressed to debtors lacked mandatory data necessary to identify the receivables, including the title for which the debt arose, from which company, and the repayment date. The company also commissioned a court bailiff to send requests for payment to the consumers, although no enforcement proceedings were pending against them. Their content and form could give the wrong impression that the case is already at the stage of seizure of assets by the bailiff. UOKiK questioned GetBack’s repeated filing of lawsuits against the same consumer. After the court discontinued the proceedings, the debt collector once again sent a suit in the same case, hoping for the consumer’s mistake in submitting an appeal to the court. In addition, the company used to communicate with consumers using the following names: “Debtor Ombudsman” or “Office of Debtor Ombudsman” to designate its activities, which could suggest that it is an independent public institution providing aid to consumers. A financial penalty of over PLN 5 mn was imposed on the company. Getback appealed against the Office’s decision.

The debt collection company Vex used aggressive market practices similar to GetBack – intimidation, contacting the debtor’s close ones without his/her consent, violating consumer privacy. In addition, when contacting consumers, it did not provide them with full information about the amount of debt and data of the company to which it is in arrears. UOKiK imposed on Vex a financial penalty of ca. PLN 20 thousand. The decision is not final.

³⁶ Decision RLU-2/2018.

³⁷ Decision RGD-2/2018.

Soft calls – debt collection fees

After receiving numerous complaints about the amount of debt collection fees charged by banks, lenders and credit unions, UOKiK send them the so-called soft calls. In its messages it inquired about the costs that consumers are charged for sending a reminder or visit of a debt collector and in what order and how often these measures are used. The Office reminded entrepreneurs of the need to adjust the amount of fees to the actual costs incurred. As a result of the Office's interventions, financial institutions gave up collecting debt collection fees or significantly reduced them.

Similar results were brought by the proceedings against banks – three explanatory ones and one procedure for declaring contractual clauses to be unlawful.

The details of actions regarding debt collection fees can be found in the press release: https://www.uokik.gov.pl/aktualnosci.php?news_id=14481.

Life insurance with UFK – monitoring compliance with the Act on insurance and reinsurance activities

In 2018, UOKiK instigated 5 further proceedings against entrepreneurs offering life insurance with an insurance capital fund (ICF). **Their purpose was to control agreement templates with consumers in terms of their compliance with the provisions of the Act on insurance and reinsurance activity³⁸ and market practices of insurers.** Before the new law became effective (i.e. before 1 January 2016), the main consumer problem was the high liquidation fees charged by insurance companies at the time of termination of an agreement with ICF. Since the provisions on insurance activity are in force, new practices and clauses are appearing in the market that raise doubts of the Office, including primarily new types of fees that may serve to retain the consumers contributions and discourage them from giving up the insurance.

In proceedings against 4 insurers³⁹ these contractual

provisions were questioned that were used by the companies to retain a high percentage of customer premiums paid in the first years of the insurance agreement, treating them as the initial fee, allocation fee, and distribution fee. Thus, it reduced the amount in the consumer's account. In the event of terminating the agreement in the initial period of its validity, a significant part of the accumulated funds was not paid to the consumer. In the opinion of UOKiK, this mechanism served to transfer to consumers the initial costs of insurance, which are mainly composed of acquisition costs. In subsequent proceedings⁴⁰ UOKiK questioned the insurer's market practice of offering insurance that did not meet the needs of consumers specified in the surveys.⁴¹ It might have proposed, for example, too long term or products with too much investment risk.

Cooperation with other bodies and institutions

As part of the proceedings, as well as in the case of receiving signals about the occurrences in the financial services markets, UOKiK cooperates with the Office of the Polish Financial Supervision Authority, the Financial Ombudsman, the Central Anti-Corruption Bureau, as well as the prosecutor's office (including the National Prosecutor's Office) conducting preparatory proceedings in a given case. Such contacts take place through the exchange of written or electronic correspondence, as well as telephone consultations and working meetings.

In 2018, UOKiK submitted 25 notifications to the prosecutor's office regarding practices infringing collective consumer interests.

³⁸ Act on insurance and re-insurance activities of 11 September 2015 (Journal of Laws, 2015, item 1844 as amended). It became effective on 1 January 2016.

³⁹ Axa Życie, Vienna Life na Życie

Vienna Insurance Group, Generali Życie and MetLife.

⁴⁰ The proceedings are related to Open Life TU.

⁴¹ Insurance companies are required

to examine, in the form of a survey, the financial needs, knowledge and experience in the field of life insurance of people who want to conclude agreements with ICF. If the insurer

cannot offer insurance adequate to the needs of the consumer, it informs them of it in writing. The agreement is then concluded only at the consumer's request.

2.3 Supervision over the Trade Inspection

Trade Inspection (TI) is one of the institutions working to protect the interests of consumers. Its tasks are carried out by UOKiK and province inspectorates of the Trade Inspection. **As part of the supervision over the Trade Inspection, the Office plans, coordinates, monitors and analyses the results of controls carried out by province Trade Inspection inspectorates.** They relate to agricultural products and foodstuffs, non-food products and services. Non-food products are also tested for conformity with EU requirements and general safety principles. These are planned controls, included in UOKiK control plan for a given year, and unplanned controls: on own subjects and as intervention, resulting from the complaints received and information from consumers, public administration bodies, local government bodies and entrepreneurs. Priority areas in the scope of control are also driven by the results of the Control of Trade Inspection carried out in previous years, as well as from the universality of occurrence of a given product, including its availability to particularly sensitive groups of buyers.

Moreover, the Office's competence includes checking the legality and reliability of entrepreneurs' activities and conducting appeal proceedings against decisions issued by province inspectors of the Trade Inspection.

Review of controls

Controls of foodstuffs

In 2018, nationwide controls were carried out in 19 categories. **Their key goal was to reveal false products and to provide appropriate point of sale information about the products offered, including their country of origin.**

In connection with numerous signals from organisations and associations of agricultural producers and at the request of the Ministry of Agriculture and Rural Development, UOKiK commissioned the Trade Inspection to carry out **ad hoc controls of potatoes, cabbage, Chinese**

Trade Inspection controls*

8276

controls of agricultural products
and foodstuffs

4266

controls on non-food items
and services

905

controls regarding general
product safety

1454

controls regarding compliance
with new approach directives

2804

other controls – including legality and reliability
of conducting business operations

156

decisions of UOKiK regarding appeals against decisions
of province inspectors of Trade Inspection**

* These are controls: included in UOKiK control plans, Trade Inspection own controls, intervention controls.

** This number includes the appeals against decisions related to the indicated categories of controls and the quality of fuels.



cabbage, and tomatoes in terms of their commercial quality and correct labelling. In addition, retail prices of **soft fruit** were monitored for over three months, and in some provinces also prices in the stages of purchasing and further marketing.

The **phenomenon of double quality** was also a very important area of UOKiK's interest. As part of control activities, the commercial quality of the same products offered in the Polish market and their original counterparts imported from Western Europe was checked. A comparative assessment of the results of the control of these products was carried out, following the model of similar tests carried out by the Trade Inspection in 2017. Products that showed qualitative differences in the two previous UOKiK discernment actions delivered with the help of Trade Inspection (from 2017 and 2018) were reported to the EU-wide comparative campaign for food products piloted by the Joint Research Centre – a unit of the European Commission. The action aimed to check whether there are significant quality differ-


ences between products of the same brand, with the same labelling, offered in different EU Member States. UOKiK collected and provided data on 92 types of products. Currently, the campaign is being summarised and guidelines are being prepared for further joint actions.

Controls of non-food products and services

In 2018, 11 control topics were completed in this respect. **The most numerous actions were taken in matters of quality and labelling of textile products and correct information on prices from entrepreneurs.** The control also checked products for the presence of certain chemicals in them, e.g. cadmium, lead, chromium. In total, 131 products were tested, including jewellery, hair accessories, leather products, scooter tires.

Using the new competences, TI conducted controls of 92 **real estate** entrepreneurs in terms of compliance with the requirements of the property act.⁴² It prohibits conducting activities in the field of property valuation, real

⁴² Act on property management dated 21 August 1997 (Journal of Laws 1997, no. 115, item 741, as amended).



UOKiK is a member of many inter-institutional cooperation forums due to the supervision over various categories of products in trade. These include:

Cooperation Forum on the supervision of chemicals – together with the Chief Sanitary Inspector, the Chief Labour Inspector, the Chief Inspector for Environmental Protection, the Minister of Finance, the Inspector for Chemical Substances and the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products,

The Team for Counterfeiting and Illegal Trading of Medicinal Products and Other Falsified Products Meeting the Criteria for Medicinal Products – its members also include: Chief Pharmaceutical Inspector, Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, Polish Police Headquarters, National Drug Institute, Ministry of Finance, Chief Sanitary Inspectorate,

The National Forum for Exchange of Chemical Information, which is attended by: Ministry of Development, Central Institute for Labour Protection, National Labour Inspectorate, Chief Sanitary Inspector, Ministry of Health, National Bureau for Prevention of Drug Use, Office for Registration of Medicinal Products, Medical Devices and Biocidal Products.

Inter-ministerial cooperation is also related to **the Ministry of the Environment and the Environmental Protection Inspectorate** as part of the supervision of environmental protection regulations.

In turn, supervision over cars, car parts and equipment parts is carried out jointly with the **Industrial Automotive Institute, Technical Transport Inspection and the Motor Transport Institute**.

estate brokerage and real estate management without concluding a third party liability insurance agreement for damages caused in connection with the conducted activity. If an infringement is found, the TI inspector may impose a fine in the form of an administrative decision. The control found irregularities in 10 entrepreneurs.

Controls of general product safety

The purpose of the Trade Inspection is to aim at creating a market where consumers feel safe. One of the means to do this is to control products against general safety requirements. Safe products are those that do not threaten the life and health of consumers. In 2018, the control priorities included: electrical devices for detecting carbon monoxide in residential premises, ladders and stools, articles for children – including baby prams, safety gates, pacifiers, cots, baby carriers, items used when feeding. **In total, 3 389 products were covered by planned, own and intervention controls**, of which the safety of 26 pct was questioned. 81 products were subjected to laboratory tests, and the results were negative for 40 products.

Controls of EU requirements – new approach directives

Products manufactured and marketed in each of the Member States of the European Union must meet certain requirements in terms of their safety to humans, animals and the environment. They are subject to mandatory legal regulations called new approach directives.⁴³ The Trade Inspection enforces EU requirements on the Polish market in accordance with control priorities set by UOKiK. In 2018, they were: toys, electrical equipment, consumer machines, personal protective equipment, fireworks, devices burning gas fuels. **Planned and own controls of the Trade Inspection covered a total of 5,282 products**, with ca. 31 pct of articles being questioned. 576 products were tested in laboratories, and negative results were found in 41 pct of the cases.

Amendment of the law regarding conformity assessment systems and market surveillance

In 2018, work was completed on the draft amendment to the Act on conformity assessment systems and market surveillance*. It entered into force on 19 July 2018. The act introduces to the Polish market surveillance system the concept of "formal non-conformity," the institution of control and administrative proceedings regarding formal non-conformity, as well as decisions to eliminate such non-conformity. In addition, it is possible to impose a financial penalty of up to PLN 100 thousand when the manufacturer or importer introduces non-conforming products to the Polish market after 19 July 2018.

* Act on conformity assessment systems and market surveillance of 13 April 2016, Journal of Laws 2016 item 542 as amended.

Control of filtering respirators (called anti-smog masks)

In 2018, control of filtering masks protecting consumers from polluted air continued. On frosty and windless days, smog is a very troublesome phenomenon, as harmful chemical compounds and dust are inhaled in such conditions. As in 2017, the control carried out by the Trade Inspection aimed at eliminating from the market the respirators that do not meet the applicable requirements and thus pose a threat to users.

TI inspectors submitted 15 models of respirators for testing in the accredited laboratory of the Central Institute for Labour Protection in Łódź. It was checked whether they meet three parameters: inhale resistance, paraffin oil mist penetration and internal leakage. 6 masks got negative results, which means that they do not have adequate protective properties and let through the harmful dust present in the air. The Office instigated proceedings against three entrepreneurs who offered these products in the market. In the case of one company, the proceedings were completed in relation to the withdrawal of the product from the market (1,525 pieces) and notifying consumers of non-compliance with the requirements, while in the case of other two, the proceedings are pending. In 2017, UOKiK controlled 10 models of masks and questioned 2 models that did not meet the protective properties.

In 2018, UOKiK developed and published on its website a guide for consumers who would like to learn more about proper protection against smog: "Buying filtering respirators. Guide for consumers."*.

* Available at: <https://uokik.gov.pl/download.php?plik=22971>.

⁴³ They relate to over 20 product groups, including toys, electrical devices, personal protective equipment, building materials, machines, elevators.

2.4

Product safety and market surveillance

UOKiK supervises the general safety of non-food products⁴⁴ in order to protect the life and health of consumers. It also monitors the market surveillance system, which serves to ensure that only safe products meeting EU requirements under the conformity assessment system are present in the market. All products placed in the European Union market must meet certain safety requirements. Over 20 product groups are subject to the essential requirements set out in the new approach directives issued by the European Commission. They were developed to create a uniform system of regulations, thanks to which technical barriers were removed and the free circulation of these products on the single market of the European Economic Area was allowed. Responsibility for product safety rests with entrepreneurs, while their activities are checked by specialised institutions, including UOKiK. The Office cooperates in this respect with the Trade Inspection, commissioning its planned and intervention controls.

Activities in the area of general product safety

Information on dangerous products flow to the Office as a result of the control of the Trade Inspection, as well as thanks to signals from consumers and supervisory authorities from other EU Member States via the RAPEX system. On this basis, administrative proceedings are conducted to eliminate irregularities and market threats. When the Office finds that a product endangers the life and health of users, it may impose certain obligations on its manufacturer or distributor, e.g. order to withdraw the product from the market or from consumers. **Products considered by UOKiK as failing to meet safety requirements are entered in the register of hazardous products.** A company who introduces such a product to the market may be subject to a financial penalty of up

to PLN 100 thousand. In practice, many entrepreneurs still undertake actions to eliminate the threat during the proceedings. As a result, most of UOKiK's administrative proceedings are discontinued.

In 2018, the Office's activities were most often undertaken in the field of children's clothing, carbon monoxide sensors, grills, ladders, and prams.

UOKiK activities in numbers – 2018

109

complaints from the
market handled

242

inquiries received
and responses
provided

234

notifications
received from en-
trepreneurs about
hazardous products
(usually cars)

Information on hazardous products

Voluntary notifications from entrepreneurs

The company launching a product is responsible for its safety. This means that the product should not pose a risk when used as intended, and in another, but foreseeable manner. Manufacturers and distributors are required to notify UOKiK if their products are hazardous. As part of the notifications, entrepreneurs indicate the corrective actions they have taken regarding hazardous products. The Office monitors their implementation and publishes incoming notifications on the website. In 2018,

⁴⁴ Supervision is exercised in accordance with the act of 12 December 2003 on general product safety (Journal of















Laws of 2016, item 2047).

⁴⁵ Representatives of institutions involved in the national market surve-

illance system take part in cyclical meetings of the Steering Committee for Market surveillance, which is a per-

manent advisory team to the President of UOKiK.

UOKiK activities in 2018

	general product safety	conformity with EU requirements (new approach directives)
Explanatory actions taken	72 	98 
New proceedings	69 	203 
Decisions issued*	97 	246 
- including discontinua- tion of a case due to the remedial actions taken by the company and elimi- nation of the threat	81 	191 
- including imposing obligations	5 	37 
- including imposing finan- cial penalties	32 	18 
Decisions regarding applications for reconsideration	9 	6 

* Examples of types of decisions are given, therefore the figures do not add up to the total number of decisions issued. On the basis of the Act on general product safety, it is possible to issue different decisions, which often

combine different categories – e.g. decisions discontinuing proceedings and imposing a penalty or remission, decisions imposing obligations with or without a financial penalty, decisions imposing only a penalty.

234 voluntary notifications were received, of which 204 were related to motor vehicles.

Failure to notify a hazardous product may result in a financial penalty of up to PLN 100 thousand. Similar sanctions are imposed on entrepreneurs who market products already included in the register of hazardous products.

Register of hazardous products

UOKiK operates a national information system on hazardous products. One of its elements is the register of hazardous products, which includes products considered by UOKiK as non-compliant with safety requirements. In 2018, 5 products were entered in the register.

RAPEX system

RAPEX is a system for the rapid exchange of information between EU Member States and the European Commission on products that may pose a threat within the EU. It also describes the measures that were taken in the country to exclude or restrict placing such products in the market, as well as their possible use. In 2018, EU Member States made 2,257 notifications to the RAPEX system, 152 of which concerned products manufactured or imported by Polish entrepreneurs. UOKiK, which operates the Polish RAPEX contact point, has submitted 139 notifications of dangerous products detected on the Polish market to the system.

The effectiveness of UOKiK's activities using the example of grills

3

warnings

18 144

products in which hazards have
been eliminated

12 895

products withdrawn from
the market

In 2018, the Polish contact point in the RAPEX system had the opportunity to intervene in favour of a Polish producer. Thanks to the support of UOKiK, the notification regarding the scooter manufactured by it was removed from the RAPEX system due to an incorrectly estimated risk..

Products most frequently reported to the RAPEX system:

Toys		Vehicles		Electrical and lighting equipment	
UE	707	UE	429	UE	311
Poland	94	Poland	14	Poland	17

Activities related to conformity with EU requirements

UOKiK manages the national market surveillance system, which consists of specialised institutions competent for various categories of non-food products.⁴⁶ The Office's competences include, above all, monitoring of control activities in terms of their compliance with the requirements indicated in selected acts of EU harmonisation legislation, the so-called new approach directives. If the control reveals that a product placed in the market or put into service does not meet the specified requirements, the Office initiates administrative proceedings. The company may voluntarily remove the non-conformity or eliminate the product from the market. In the absence of cooperation on its part, UOKiK may order, in a decision, to eliminate non-conformity, withdraw the product from the market or from buyers, as well as inform consumers about irregularities. Almost 80 pct decisions issued in 2018 were discontinued as a result of voluntary actions on the part of entrepreneurs. The Office's activities mainly concerned toys and electrical equipment.

The effectiveness of UOKiK's activities using the example of toys**155**

warnings

82 220products withdrawn
from the market**4810**products in which non-conformity
was removed**Information on non-conforming products****Register of non-conforming or hazardous products**

UOKiK maintains a register of products that do not comply with the requirements or are hazardous. It covers over 20 groups of non-food products, including toys, electrical equipment, home appliances or building materials. In 2018, 61 products were included in it, while 23 were delisted due to the elimination of the threat from the market, e.g. by withdrawing the product from the market.⁴⁷

ICSMS system

The information and communication system for market surveillance purposes – ICSMS (Information and Communication System for Market Surveillance) allows to collect information on products that do not meet the requirements set out in EU harmonisation legislation and the exchange of this information between market surveillance authorities of EU Member States. The Polish ICSMS contact point is located in UOKiK. In 2018, the Office did not submit any notifications to the system.

Cooperation between UOKiK and the National Tax Administration (NTA)

As early as 2017, the two institutions took joint actions to control toys imported from outside of the EU. They were checked for the content of phthalates – chemicals that give the plastic softness and elasticity. Polish customs officers controlled nearly 1.5 mn toys reported for control at the border. Almost 30 thousand pieces of products were destroyed thanks to the joint action, containing phthalates in excess of the acceptable levels. In 2018, UOKiK and NTA organised a press conference presenting the results of joint control activities. The project ended in April with the submission of a detailed report to the European Commission, which co-financed this initiative.

As part of the continued cooperation, UOKiK representatives conducted a training for customs and tax coordinators for market surveillance in 2018. The theme of the meeting were legal and organisational changes in the national and EU market surveillance system.

⁴⁶ Representatives of institutions involved in the national market surveillance system take part in cyclical

meetings of the Steering Committee for Market surveillance, which is a permanent advisory team to the President

of UOKiK.

⁴⁷ Art. 61 sec. 4 of the act of 13 April 2016 on conformity assessment sys-

tems and market surveillance.

2.5 Laboratories

The laboratories that form a part of UOKiK are eight research units performing product tests commissioned by the President of UOKiK and province inspectors of the Trade Inspection. The laboratories check products from controls carried out by TI. On the consumer market, foodstuff tests are the most frequent, which is why five UOKiK laboratories (based in Katowice, Kielce, Olsztyn, Poznań, and Warszawa) specialise in this field. Other activities include: textile products and other non-food items, including toys for chemical testing (Łódź), toys and items for children such as prams, bicycles, baby carriers etc. (Lublin), fuels (Bydgoszcz). Thanks to specialist analysis, products that do not comply with regulations or pose a threat to consumers are eliminated from the market.

Each of the laboratories is accredited by the Polish Centre for Accreditation (PCA) confirming the compliance of the laboratory's operation with PN-EN ISO/IEC 17025 standard. During audits, PCA confirmed the high competences of the laboratories and their employees. In 2018, UOKiK laboratories took part in 93 programmes of proficiency testing and inter-laboratory comparisons.

Laboratories are developing new research methods in line with the needs of UOKiK and province inspectors of the Trade Inspection. 2018 saw introduction of 29 implementations, 46 validations of research methods, also, 37 methods were accredited. The laboratory in Kielce introduced a flexible scope of accreditation.⁴⁸

Laboratory activities in numbers in 2018

Number of tested samples and parameters determined in 2015-2018

	samples	parameters
2015	3586	34 821
2016	4367	37 991
2017	4659	41 143
2018	4330*	47 828**

* Including 2 287 samples in accordance with the declaration or legal provisions.

** A significant increase in the number of parameters determined in 2018 com-

pared to previous years results from increasing the research capabilities of laboratories.

Number of samples tested with percentage share of samples assessed as conforming using the example of selected products

Toys

467 samples tested

63% conforming samples

Textiles

299 samples tested

63% conforming samples

Milk and dairy products

406 samples tested

17% conforming samples

Fish and fish products

348 samples tested

23% conforming samples

Diesel oils

390 samples tested

90% conforming samples

Foodstuffs

376 samples tested

59% conforming samples

Gasoline

345 samples tested

99% conforming samples

⁴⁸ The term "flexible scope of accreditation" means that in flexibly defined areas of activity, the laboratory has the

ability to respond to the needs of institutions commissioning controls by modifying or incorporating additional

methods into its scope of accreditation without having to inform the PCA each time.

2.6 Fuel quality control system

UOKiK is an institution managing the fuel quality monitoring and control system,⁴⁹ which aims to eliminate the fuels that do not meet quality requirements from trading. The Office develops control plans in this area, which are implemented by the provincial inspectorates of the Trade Inspection. **The control covers the entire fuel distribution chain**, i.e. from fuel producers storing and transporting fuels,⁵⁰ through fuel bases, wholesalers, to fuel stations. Tests of fuel samples taken during controls are performed in laboratories accredited by the Polish Centre for Accreditation. UOKiK manages a specialist fuel laboratory in Bydgoszcz.⁵¹

Liquid fuel controls are performed in two ways. First of all, they take place at randomly selected fuel stations, as this type of selection better reflects the real picture of fuel quality in the market. In addition, TI checks those entrepreneurs who previously had irregularities or for whom there were signals coming from, among other, drivers, the police, customs and tax offices.

The Trade Inspection checks all types of liquid fuels available in the Polish market:

- **gasoline (unleaded RON 95 and RON 98),**
- **diesel,**
- **liquefied gas (LPG),**
- **light heating oil,**
- **liquid biofuels.**

In the case of fuels that do not meet the quality requirements, UOKiK issues a decision obliging the controlled company to refund the costs of laboratory tests. The Office also conducts appeal proceedings against decisions issued by province TI inspectors, which impose fines on entrepreneurs for failing to place information on the content of biocomponents in liquid fuels offered at service stations.

Lists of inspected fuel stations and wholesalers can be found on UOKiK website, on a specially prepared map:
http://uokik.gov.pl/kontrole_stacji_hurtowni_paliw.php.
Lists of companies involved in fuel trading are available at:
https://www.uokik.gov.pl/wykazy_podmiotow.php.
All data is updated once a month.

At the time of the first control in 2003, the percentage of liquid fuel samples failing to meet the quality requirements was 30 pct. As a result of control activities, the scale of irregularities found in companies in subsequent years significantly decreased and since 2015, it has remained below 3 pct.

The applicable regulations provide for severe sanctions for trading in poor quality fuel – it may be a fine of up to PLN 1 mn or imprisonment from 3 months to 5 years.

⁴⁹ The act of 25 August 2006 on the fuel quality monitoring and control system (Journal of Laws of 2018, item 427,

as amended).

⁵⁰ In 2018, the control did not cover companies transporting fuels, as the

police did not request such a control.

⁵¹ Fuel tests are carried out by the laboratory in Bydgoszcz, which is a part

of UOKiK Department of Laboratories, and by a commercial laboratory selected in a tender.

Review of activities

Controls at randomly selected companies

In 2018, **1.9 pct of samples** of liquid fuels taken from randomly selected companies were questioned, i.e. slightly less than in 2017 (2.34 pct). As in 2017, **irregularities were less frequently related to gasoline** (0.75 pct) than diesel (3.4 pct). The random sample was slightly larger than last year: in total, inspectors tested 947 samples taken at 947 stations. Together with the stations selected on the basis of complaints, 3.71 pct of the samples failed to meet the quality requirements.

In a random test of the quality of liquefied gas (LPG), irregularities were found in **1.4 pct of samples** (a year earlier it was at 2.14 pct).

Controls based on complaints and previous irregularities

The control also checked the quality of fuels offered by entrepreneurs for which there were complaints and those with irregularities in previous years.

The results of liquid fuel control deteriorated compared to 2017. Out of 664 diesel and gasoline samples taken at 575 stations, inspectors questioned 6.63 pct (a year ago it was at 3.76 pct). The reservations more often were related to diesel (9.98 pct of samples) than gasoline (0.82 pct). As part of LPG gas control, inspectors questioned 2 pct. of samples, so there was an improvement compared to 2017, when it was at 4.55 pct.

UOKiK decisions regarding fuel quality control

As part of the conducted administrative proceedings, 63 decisions were issued in 2018 (in the first instance) on the obligation of controlled entrepreneurs to pay the costs of laboratory tests, which showed that fuel samples did not meet the quality requirements.

randomly controlled
stations and samples
taken

questioned
samples

Liquid fuels – gasoline and diesel



947

1,9%

LPG



413

1,43%

Control results

721

notifications of
improper fuel
quality

63

decisions of
UOKiK obliging
entrepreneurs to
cover the costs of
laboratory tests

44

notifications to the
prosecutor's office
about suspected
crime

77

information provided
to the Energy Regula-
tory Office regarding
petrol stations that
violated the terms of
licenses for trading
in liquid fuels and
the provisions of the
energy law

63

UOKiK decisions
ordering
entrepreneurs to
cover the costs of
laboratory tests

18

TI decisions to with-
draw substandard
fuel from trading

6

UOKiK's decisions
regarding appeals
from companies
against the obligation
to cover the costs of
laboratory tests

The Office worked together with the Ministry of Energy on the amendment of the Act on the fuel quality monitoring and control system and implementing regulations to this act. The purpose of this work was to introduce regulations regarding the quality control of solid fuels, including also the quality requirements for solid fuels, sampling method, and research methods. The amended regulations became effective on 12 September 2018.⁵²

⁵² Act of 5 July 2018 amending the Act on the fuel quality monitoring and con-

trol system and the Act on the National Tax Administration (Journal of Laws of

2018, item 1654).

2.7 Out-of-court dispute resolution system

A new model of the out-of-court consumer dispute resolution system, also referred to as amicable or alternative (ADR – Alternative Dispute Resolution), has been in force since 2017.⁵³ It consists of public and private institutions that deal with amicable proceedings between consumers and entrepreneurs in matters falling within their jurisdiction. If no such entity has been created in a given sector, then the horizontal entity, i.e. the Trade Inspection, will be appropriate for it. This ensures **every consumer dispute can be settled by a specialised institution**. Representatives of ADR institutions, independent and impartial experts, e.g. mediators, assist in reaching the agreement.

Institutions dealing with out-of-court dispute resolution may obtain the status of authorised entity after sending an application for being included in the register kept by UOKiK. As part of the supervision of the system, the Office assesses the applications received, makes arrangements with the institutions applying to be included and analyses the documents governing their operation.

Authorised entities have numerous obligations and requirements specified in the ADR act. Compliance with them is monitored by UOKiK through, among others, analysis of the websites of these institutions, activity reports, and exchange of information during working meetings. The following representatives of the ADR system in Poland take part in those meetings: UOKiK, authorised entities, ADR/ODR Contact Point and European Consumer Centre.

In 2018, ADR entities received over 18.5 thousand applications for arbitration. They most often concerned complaints about industrial goods (mainly footwear) and financial services (mortgage loans). The highest number of applications was received by the Trade Inspection – over 9 thousand.

The reports provided by ADR entities show that the most common reasons for consumer disputes were: improper (in the opinion of consumers) consideration of a complaint or lack of response to it, selective knowledge of regulations related to the protection of consumer rights, conscious assignment of liability from sellers to manufacturers, misleading when concluding an agreement.

Register of authorised entities

The register is kept with UOKiK, which makes it available on its website at: https://www.uokik.gov.pl/rejestr_podmiot_uprawnionych.php. The list includes data of ADR entities and information on the category of consumer disputes etc. **Currently, 10 authorised entities are listed in it:** 6 public entities established by or in the structure of public bodies and 4 private entities created by entrepreneurs from a given industry. In 2018, two non-public institutions entered the register.⁵⁴ The data contained therein and any changes thereof are also reported to the European Commission, which publishes a list of entities conducting out-of-court settlement of consumer disputes notified to it by EU Member States using the ODR platform (ODR – Online Dispute Resolution).

⁵³ The model for the new system was introduced by the Act on out-of-court resolution of consumer disputes of

23 September 2016 (Journal of Laws, 2016, item 1823), hereinafter called: the ADR Act.

⁵⁴ Chamber of Electronic Economy and Centre for Amicable Dispute Resolution regarding Food.



Contact point for ADR/ODR

A contact point was established at UOKiK to provide information on amicable proceedings. Its employees help fill in applications, inform about competences and procedures used by authorised entities and on other methods of pursuing claims. In 2018, **a total of 988 pieces of advice were provided**, including 330 by email and 339 by phone. In addition, consultations were also held during individual meetings at the Office. The most frequently considered cases were air transport services and consumer sales.

Website about ADR

UOKiK operates the website www.polubowne.uokik.gov.pl on out-of-court dispute resolution. The website contains useful information about the essence of the ADR system and its entities. It includes a search engine of institutions authorised to conduct amicable proceedings.

ODR platform

The ODR platform is an interactive website for consumers and entrepreneurs who want to resolve their disputes amicably. It is available at: <https://ec.europa.eu/consumers/odr/>. Through it, **you can lodge a complaint about goods or services purchased online**, both at home and abroad. This is done by completing the electronic form and finding the suitable entity to handle the dispute. All institutions listed in the platform were verified in terms of compliance with legal requirements and were registered by national authorities (in Poland, by UOKiK). The site is available in all EU languages. The European Commission is responsible for creating and operating the ODR platform. From May to June 2018, it coordinated a pan-European informational and educational campaign, whose main goal was to promote the ODR platform among entrepreneurs.

ADR entities present in the register in 2018

Public entities: Sector-related

financial and insurance services	telecom-munications and postal services	energy services	rail transport services
Financial Ombudsman, Arbitration Court at the Polish Financial Supervision Authority	President of the Office of Electronic Communications	Negotiation coordinator of the President of the Office for Energy Regulation	Railways Passenger Ombudsman at the President of the Office of Rail Transport

Non-public entities: Sector-related

services offered by banks	air transport services	sale of goods and services via the Internet with members of the Chamber	sale of food products
Bank Arbiter at the Polish Bank Association	Friendly Flying Passengers Association*	Chamber of Electronic Economy (entered in the register in 2018)	Centre for the Amicable Resolution of Food Disputes at the Polish Federation of Food Producers of the Employers Association (entered in the register in 2018)

Horizontal

Trade Inspection
Sale of goods and services, in matters not covered by other specialised entities, including tourism, development, education, renovation and construction

* This institution was deleted from the register on 14 June 2019.

2.8 Cooperation with consumer ombudsmen and consumer organisations

Cooperation with consumer ombudsmen

In 2018, UOKiK **intensified cooperation** with municipal and district consumer ombudsmen, thanks to which it was possible to act more effectively in protecting individual and collective consumer rights. Ombudsmen provide the Office with all signals regarding irregularities noticed in the market. The Office's newsletter containing current information on consumer protection, including the latest UOKiK decisions and court judgments, also serves mutual communication.

Every year, UOKiK prepares and publishes a report on the activities of consumer ombudsmen based on the data received from them. In 2018, the method of collecting and presenting information was changed. They are currently included in the summary table with a breakdown by province and district. This allows us to standardise data and create statistics. In the reports, ombudsmen have applied a new subject matter classification of advice provided this year, which allows comparison of more categories of cases.

The Office also organised a series of training sessions for ombudsmen, in particular on procedural aspects. The meetings were held twice a year in each UOKiK delegation and served to integrate the consumer environment. Other institutions also joined this initiative, e.g. the Polish Ombudsman, the Office of Electronic Communications or the Financial Ombudsman. In addition, UOKiK financed a series of procedural trainings for ombudsmen, granting subsidies to Stowarzyszenie Dla Powiatu (Asso-

ciation for the District) for this purpose. It also committed a company, in the decision concluding the proceedings on practices infringing collective consumer interests⁵⁵ to organise eight one-day workshops for ombudsmen.

The **National Council of Consumer Ombudsmen** operates by the President of UOKiK, with an opinion-making and advisory role. In 2018, the rules for shaping its make-up changed. Currently, these are the ombudsmen themselves, rather than directors of UOKiK local offices, choose their representatives. The first meeting of the new council was held in June, and the second – in December 2018.

Cooperation with consumer organisations

UOKiK has cooperated with consumer organisations for many years, including as part of educational campaigns, nationwide counselling, signalling market violations and issuing opinions on legal acts.

In 2018, UOKiK focused on expanding the group of organisations with which it could undertake day-to-day cooperation. The partners, among others, were entities specialised in specific industries (primarily the finance industry). Interest in consumer issues is also growing among institutions that so far have been active in other fields, e.g. education of seniors or young people.

Every year, the Office commissions consumer organisations through a competition to carry out tasks aimed at promoting consumer rights and providing legal assistance. Permanent projects include: nationwide direct counselling, e-advice and consumer helpline. In addition, two open competitions were announced, in which projects were selected to "promote and protect consumer rights by consumer organisations". The first concerned financial issues, the second – the most serious threats in the consumer market, including primarily mis-selling of financial products, unfair sales made off-premises, insufficient knowledge of consumer rights among market participants. **In total, in 2018, the Office allocated nearly PLN 3.5 mn to the implementation of commissioned tasks.** This amount is ca. PLN 0.7 mn higher than in 2017.

⁵⁵ Decision DOIK-2/2019 was related to Lidl, which used unfair market practice consisting in shortening the time of product promotion without informing

its customers about it. The company was obliged, among others to finance training for consumer ombudsmen. The training was provided by lawyers from

the Consumer Federation.

⁵⁶ Granting subsidies by UOKiK is done in accordance with the provisions of the Act on public benefit activities

and volunteering. The information on competitions is posted on the Office's website, in the Public Information Bulletin and at its head office.

2.6
Fuel quality control
system

2.7
Out-of-court dispute
resolution system

2.8
**Cooperation
with consumer
ombudsmen...**

2.9
European Consumer
Centre

2.10
Judicial practice in
consumer protection
cases

List of subsidies granted in 2018

Total amount of subsidies granted: **ca. PLN 3,5 mn***



In addition, UOKiK commissioned 6 other projects under the grant for a total of PLN 273 thousand. Their effect was, among others training for consumer ombudsmen, youth guides, financial education activities

for seniors, activities for teachers and students, legal advice on financial services. Beneficiaries of the subsidy included: Stop Banking Lawlessness, Association for the District and Euro-Concret Association.

* The amount is rounded and calculated on the basis of the amount of subsidies under all agreements concluded with organisations for the implementation of

tasks commissioned in 2018.

2.9 European Consumer Centre

In 2018, the European Consumer Centre in Poland (ECC Polska) was included in the structures of UOKiK. It belongs to the network of European Consumer Centres (ECC-Net), comprising 30 centres in 28 EU Member States as well as Norway and Iceland.

The goal of ECC Polska is to provide free advice to consumers and resolve their cross-border disputes amicably. The Centre accepts complaints from Polish customers about foreign entrepreneurs in connection with purchases and travels around Europe.

Every year, the Polish centre receives an increasing number of complaints – in 2018, **ECC helped 5,321 consumers**. Most of the complaints from Polish consumers are related to purchases made from German entrepreneurs, while Polish entrepreneurs most often receive complaints from Czech customers.

Foreign consumers most often complained about Polish entrepreneurs in connection with the purchase of:

- medical products, e.g. hearing aids,
- air services,
- extracurricular education services (in particular language courses).

ECC POLSKA INITIATIVES IN 2018

- organisation of the event “Consumer on the border” in Cieszyn and debates on the new tourism law,
- conducting three webinars,
- participation in events such as Erasmus Day, Europe changes the Warsaw metropolis,
- preparing a report on the ban on trade on Sundays in the EU and airline complaint forms.*

* the materials are available at konsument.gov.pl

Examples of cases:

Engagement ring lost in delivery.

A consumer's fiancée did not get engaged because the customer received an empty box. Thanks to the help of ECC Polska and ECC Germany, the consumer received a refund of nearly EUR 1,000.

Too frequent returns.

An Italian shop prevented a Polish consumer from making purchases because he returned goods within 14 days too often. After the intervention of ECC Polska and ECC Italy, the consumer could make purchases again, try on and return goods without providing a reason.

Money lost when refuelling.

An automatic fuel distributor in Austria collected money but did not distribute fuel. The consumer lost EUR 40. With the help of ECC Polska and ECC Austria, the customer was refunded.

INTERNATIONAL COOPERATION

At the end of 2018, the European Consumer Centre joined the ranks of the so-called “strategic group” of ECC-Net. The group is responsible for managing the network, formulating its goals and cooperating with stakeholders. As part of the group, ECC Polska is responsible for the development and uniformity of conducting online cases.

ECC representatives also participated, among others, in workshops on the new case handling system called IT-tool, meetings for directors of ECC-Net network with the European Commission, ECC-Net communication workshops and the meeting of consumer centres of the Visegrad Group countries.

2.10 Judicial practice in consumer protection cases

Judicial practice in cases related to collective consumer interests

Entrepreneurs may appeal UOKiK's decisions related to violation of collective consumer interests to the Court of Competition and Consumer Protection (SOKiK). If the court does not agree with the decision, it may repeal or modify it, e.g. by reducing the amount of the fine imposed on the company. A SOKiK judgment may be appealed to the Court of Appeals in Warsaw. It is also possible to file a cassation appeal to **the Supreme**,⁵⁷ is available on the Office's website, where information on decisions are published, including on the violation of collective consumer interests and contractual clauses classified as prohibited.

Review of judicial practice

SOKiK – judgment of 30 October 2018 regarding the appeal of Multimedia Polska⁵⁸










In the 2015 decision, UOKiK decided that Multimedia Polska violated the collective consumer interests. The company offered consumers cable television services, with only a certain number of channels being guaran-

teed, but not specifying the package's list of channels in the agreement. Withdrawal of a given channel by the service provider did not give consumers the option of terminating the agreement without cost. At the same time, numerous complaints about the operator showed that when buying access to television, the consumer was convinced of having access to specific channels. Meanwhile, the channels mentioned in the agreements, on the website or during sales conversations, including the most desirable ones, were not included in the offer. **The company gave itself the option of unilateral changes in the provisions of the agreement.** Thus, not only did it fail to grant subscribers the right to terminate the agreement without cost in the event of unacceptable changes in the programme, but it did not even guarantee that new channels introduced in place of withdrawn channels would be on similar topics. The Office ordered the company to discontinue this practice and obliged to remove its effects by way of public compensation. A fine of over PLN 4.8 mn was imposed on Multimedia Polska. SOKiK shared the Office's position and dismissed the company's appeal. The court found that its practice was contrary to decency. It emphasised in its judgment that the channel package is an important element of the agreement and consumers have the right to resign from the service if it is modified by the company. The company appealed against the SOKiK judgment to the court of second instance. The proceedings are pending.

SOKiK – judgment of 30 October 2018 regarding the appeal of Polska Telefonia Stacjonarna (PTS)⁵⁹

In 2014, UOKiK issued a decision in PTS case, in which it recognised the company's activities as practices infringing collective consumer interests. They were the subject

Court judgments in cases of violating collective consumer interests – years 2016-2018*

	Court of Competition and Consumer Protection			Administrative Court in Warsaw			Supreme Court		
	2016	2017	2018	2016	2017	2018	2016	2017	2018
Judgments issued in cases of violation of collective consumer interests	 36	 32	 28	 34	 95	 28	 1	 12	 1

* The database of judgments by SOKiK, the Court of Appeal in Warsaw and the Supreme Court regarding the decisions of the President of UOKiK is available at: https://www.uokik.gov.pl/baza_wyrokow.php.

⁵⁷ These are court judgements after 1 September 2015.

⁵⁸ Ref. No. XVII AmA 42/16.

of over 700 consumer complaints. The Office's proceedings confirmed **that representatives of PTS during talks with consumers falsely impersonated their current operator and proposed a reduction in the subscription.** The agreements were concluded via couriers of the company, who, after the documents were signed by the customers took the documents, thus obstructing their ability to withdraw from the agreement within the statutory period of 14 days. UOKiK imposed a fine of over PLN 350 thousand on the company. In the appeal proceedings, SOKiK upheld this decision and found the sanction to be adequate to the company's violations. Witnesses questioned by the court confirmed the allegations contained in the decision against the PTS.

SOKiK – judgment of 18 May 2018 on the appeal of Raiffeisen Bank (formerly Polbank EFG)⁶⁰

The judgment concerns the decision of UOKiK from 2014. It found that Raiffeisen Bank violated the collective consumer interests. **The company concluded agreements with customers by phone without previously providing relevant information in writing or on a durable medium.** In addition, it did not recognise the right of consumers to withdraw from the agreement within the period of 30 days as provided for by law. The company's consultants presented the offer as a "scheme" and "saving" while the proposed Kumulus Savings Multiplication Programme was an agreement for insurance policies combined with deposits – group life and endowment insurance. The bank concealed the fact that the consumers will lose their funds if they resign in the first two years of the agreement's term. The company was fined over PLN 21 mn. In 2018, SOKiK dismissed the bank's appeal, but considered the sanction to be high and reduced it to over PLN 5 mn. UOKiK appealed against the judgment.

SOKiK – judgment of 13 March 2018 in the case of the appeal of Polski Prąd i Gaz⁶¹

In 2016, UOKiK imposed a fine of over PLN 10 mn on Polski Prąd i Gaz **for misleading consumers by falsely impersonating their current electricity provider.** Its representatives suggested that the documents to be signed are an annex to the agreement or that the requirement to sign them results from changes in the regulations. The

company also put pressure on customers, threatening them with power cut. **Consumers were given false information about the amount of future bills, they also did not receive signed documents, nor were they informed about the right to withdraw from the agreement.** The decision was upheld in 2018 by SOKiK, which did not find any grounds to reduce the fine imposed on the company.

Court of Appeals – judgment of 7 November 2018 in the case of the appeal of UOKiK and Provident⁶²

In 2013, UOKiK issued a decision in which it recognised Provident's actions as a practice infringing collective consumer interests. **The company charged additional fees for home service and additional preparation fee when concluding a loan agreement, without informing about these costs in the information form.** In addition, these fees were not included in the total cost of the loan and the actual interest rate. The penalty imposed on Provident in this decision was over PLN 12 mn. The company appealed to the Court of Competition and Consumer Protection. In 2017, SOKiK issued a judgment, which reduced the penalty imposed by the Office to ca. PLN 770 thousand. Both parties appealed to the Court of Appeals, which in 2018 recognised UOKiK's arguments and dismissed the company's appeal. CA assessed the harmfulness of the practice of not providing full information on fees related to servicing the loan at the consumer's home much more seriously than SOKiK. In its opinion, these activities targeted particularly vulnerable consumers in financial difficulties, who urgently needed cash. Such persons are much more willing to accept the offer on unfavourable conditions, which they only learned at the final stage of concluding the agreement. The court also noted that the fees charged for home service were not proportionate to the costs incurred by Provident. In the court's assessment, UOKiK correctly calculated the amount of the fine imposed on the company.

Court of Appeals – judgment of 23 January 2018 regarding the appeal of Getin Noble Bank⁶³

In 2013, UOKiK stated in a decision that **the bank's advisors were misleading customers by offering life insurance under UFK, which is an insurance policy combined**

59 Ref. No. XVII AmA 36/15.

60 Ref. No. XVII AmA 4/15.

61 Ref. No. XVII AmA 34/17.

62 Ref. No. VII AGa 1473/18.

with a deposit. They did not inform them about the risk of losing savings and only exposed the benefits of the financial product. In fact, the consumer concluded an agreement for a long-term investment product – insurance with a capital fund, and in the case of withdrawing from it, they lost their savings. The Court of Appeals shared the opinion of the Office that the bank misled consumers by hiding important product features from them. Pursuant to the CA judgment, the bank paid a fine of PLN 5 mn to the state treasury. The decision is final and represents a preliminary ruling in similar cases. This means that consumers can rely on this decision when they make similar claims before other courts.

Supreme Court – judgment of 9 January 2018 regarding the cassation appeal of Telekomunikacja Nowum⁶⁴

In the 2012 decision, UOKiK stated that the company violated the collective consumer interests. It questioned the practice, which consisted in failing to provide the template statement of withdrawal from the agreement to consumers with whom the company concluded agreements outside the premises of the company (e.g. during a sales representative's home visit). The Office's reservations were also related to collecting compensatory fees from consumers when, for example, the customer withdrew its order of a service before its commencement. This may have obstructed consumers from exercising their right to change their telecommunications service provider. UOKiK imposed a financial penalty of over PLN 1.3 mn on the company. The decision was upheld by the courts of subsequent instances. In a recent judgment, the Supreme Court dismissed the company's cassation appeal.

Judicial practice in cases related to general product safety and cases related to product conformity with EU requirements

UOKiK's decisions regarding general product safety and conformity of products with EU requirements (new approach directives) are subject to complaints to the Provincial Administrative Court (PAC). A cassation appeal may be filed against the judgment issued by the PAC with the Supreme Administrative Court (SAC).

Complaints lodged and judgments issued in 2018

* general product safety and conformity with EU requirements

Complaints about UOKiK's decisions submitted by entrepreneurs to PAC:	Complaints against UOKiK decisions dismissed by the PAC:	Complaints against UOKiK decisions approved by the PAC:	Cassation appeals against decisions of the PAC submitted to the SAC
– general product safety – 3	– general product safety – 1	– general product safety – 1	– general product safety – 1
– conformity with EU requirements – 7	– conformity with EU requirements – 11	– conformity with EU requirements – 0	– conformity with EU requirements – 5

Judicial practice in cases concerning appeals against decisions of TI province inspectors and decisions imposing the obligation to pay laboratory fees

The President of UOKiK examines appeals against decisions of TI province inspectors in connection with conducted controls. In addition, the Office conducts proceedings and issues decisions regarding the imposition of the obligation to cover the costs of fuel quality tests on entrepreneurs.

UOKiK's decisions may be appealed to PAC, and the decisions of PAC may be appealed for a cassation to the Supreme Administrative Court.

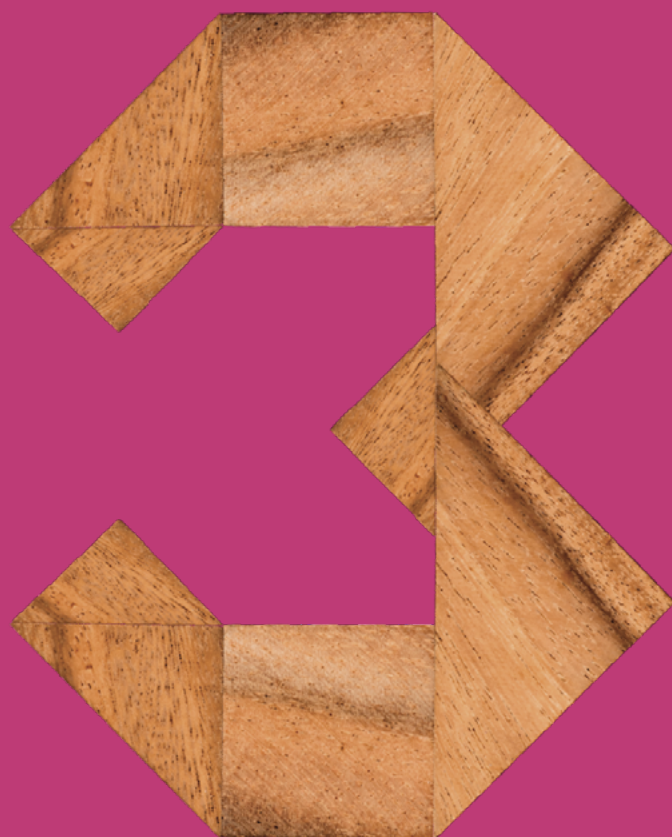
Complaints lodged and judgments issued in 2018

* quality of fuels

26 complaints about UOKiK decisions filed by entrepreneurs with PAC	25 complaints against UOKiK decisions dismissed by PAC	0 complaints against UOKiK decisions dismissed by PAC	3 cassation appeals against decisions of PAC submitted to the SAC
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⁶³ Ref. No. VII AGa 808/18.

⁶⁴ Ref. No. III SK 65/16.



Chapter 3.

As part of activities for the protection of competition and consumers, UOKiK creates and co-creates regulations, conducts social surveys and market analyses, as well as informs and educates on consumer and antitrust laws. An important area of the Office's activity is also international cooperation – bilateral and multilateral.

3.1 Legislative work

3.1.1 National legislation

UOKiK develops legal acts to better protect consumer interests and develop competition. The Office also participates in the legislative process of other governmental and non-governmental institutions. In 2018, UOKiK analysed a total of over 2,500 projects and positions for parliamentary drafts to assess their aspects that could potentially affect competition and consumers' position.

Legislative activities related to the area of UOKiK's operations

Draft act amending the Act on competition and consumer protection and selected other acts

The aim of the project was to adjust the national law to the provisions of Regulation 2018/302 of the European Parliament and of the Council of 28 February 2018 **on unjustified geographical blocking and other forms of discrimination against customers** on the basis of nationality, place of residence or place of business in the internal market and on amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.¹ Under it, customers of online shops from EU Member States and Iceland, Liechtenstein, and Norway (EEA) can shop in any online shop operating in the EU on the same commercial terms as local customers. **This applies to both purchases of goods, and services provided electronically.** Thanks to this, situations where an online shop blocks or restricts customers' access to their websites, or automatically redirects them to versions of websites intended for a given country or region, e.g. with a different offer – in terms of product or price – are to be eliminated. The prohibition of geographical blocking is an important element of the

digital single market strategy. The regulation came into force on 3 December 2018.

In addition, the act is to enable the President of UOKiK **to shape the Office's internal structure** more **flexibly** compared to the current status. In particular, this applies to the functioning of UOKiK's local offices.

One of the priorities of the planned changes is to improve the effectiveness of detecting violations of the Act on competition and consumer protection. This is to be achieved by **extending the access of the President of UOKiK to legally protected secrets: tax and banking secrecy.**

The draft will also allow to adapt the provisions of the Act on competition and consumer protection and the Act on counteracting the unfair use of contractual advantage in the trade in agricultural and food products to the current legal status by removing references to regulations that no longer apply.²

In 2018, the draft was sent for inter-ministerial arrangements and public consultations. Work on it continued in 2019.³

Draft ordinance of the Prime Minister amending the ordinance on granting the statute to the Office of Competition and Consumer Protection

The prepared amendment to the Office's statute primarily focused on organisational changes in the operation of UOKiK laboratories, aimed at improving the work of these units. The draft ordinance envisaged the creation of a new organisational unit in the head office – the Department of Laboratories. Its task is mainly to coordinate the work of laboratories supervised by the President of UOKiK, determining the current directions of these units' activities and monitoring the performance of their tasks. This department took over some of the tasks carried out in relation to laboratories by the Trade Inspection Department. The laboratories became a part of the department as sections. They play a supporting role to the Trade Inspection and other organisational units.

¹ EU OJ L 60 I of 2 March 2018, p. 1 and EU OJ L 66 I of 8 March 2018, p. 1.

² E.g. in art. 113 of the Act on competition and consumer protection.

³ On 26 February 2019, a new consolidated text of the Act on competition

and consumer protection was announced (Journal of Laws, 2019, item 369).

This change has contributed to a more efficient, more coordinated performance of laboratories' duties. The creation of a new department has improved the flow of information between laboratories and the management of the Office and its organisational units. The President of UOKiK has greater flexibility in shaping the organisational structure of laboratories, serving the most effective delivery of their tasks. Currently, it is necessary to react quickly to changes related to, among others, the development of technology in individual markets. In this context, taking into account the specific yet important role that laboratories play in the Polish consumer protection system, it has become necessary to grant the President of UOKiK the possibility of rapid implementation of mechanisms enabling the effective operation of laboratories. These mechanisms include the issues of a detailed scope of tasks and the mode of operation of laboratories, their relationships with the organisational units of UOKiK and organisational issues, such as the possibility of creating new, or combining the existing laboratories.

Another change is the creation of a new organisational unit at UOKiK head office – the Press Office. This change will contribute to an even better implementation of the

**In 2018, UOKiK analysed
a total of over**

2500

**projects and positions
for parliamentary drafts.**

Office's information policy in the field of competition and consumer protection.

In addition, the ordinance provides for a change of the name of the Department of Consumer Interest Protection to the Department of Collective Consumer Interest Protection.

The ordinance entered into force on 13 July 2018.⁴

Draft act amending the Act on proceedings in cases related to state aid⁵

UOKiK is the author of the amendment to the act of 30 April 2004 on proceedings in matters related to state aid. Its primary purpose is:

- adjusting the provisions of the act to current EU law;⁶
- introducing changes regarding the scope of information presented by entities applying for state aid;
- changing the method of submitting reports to the President of UOKiK by entities granting state aid;
- repealing chapter 5 regulating the issue of conducting state aid proceedings before the EU Court of Justice.

Draft Act on protecting the rights of buyers of apartments or single-family houses, and on the Developer Guarantee Fund (the so-called developer act)

The purpose of the proposed changes is primarily **to improve the effectiveness of protection for buyers of apartments or single-family houses, including in the event of the bankruptcy of the developer.** Increasing consumer protection in the market means both new regulations and clarification of the existing solutions.

⁴ Ordinance No. 108 of the Prime Minister dated 2 July 2018 amending the ordinance on granting the statute to the Office of Competition and Con-

sumer Protection (M.P. 2018, item 659).
⁵ Journal of Laws, 2018, item 362

⁶ Related to the provisions of Commission Regulation (EU) No 1407/2013

of 18 December 2013 on the application of Art. 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid and Commission Regu-

lation (EU) No 651/2014 of 17 June 2014 declaring certain types of aid compatible with the internal market in application of Art. 107 and 108 of the Treaty.

One of the priorities is the better protection of future residents' payments. The original concept⁷ envisaged a change in the catalogue of the measures of buyers' payment protection through the liquidation of an open residential escrow account (OREA) offered without additional security in the form of a bank or insurance guarantee. These types of bills pose a risk of losing some of the customers' money in the event of the bankruptcy of the investment company or discontinuation of the investment. In the event of liquidation of OREA, a closed residential escrow account (CREA) and OREA backed by a bank or insurance guarantee would be available in the market. These types of accounts would guarantee the buyers protection of the funds paid by them in the event of the bankruptcy of the developer and the buyer's withdrawal from the agreement. Numerous comments and reservations from market participants, as well as the Ministry of Investment and Development were raised in relation to this concept.

When designing alternatives to the liquidation of OREA, a solution was sought that would fully secure buyers' payments. It was to ensure the protection of these funds at the same level as CREA, while enabling developers to maintain their preferred investment financing method. **Establishing the Developer Guarantee Fund** (DGF) is such a solution.

For this purpose, a draft act was prepared on the protection of the rights of buyers of apartments or single-family houses, and on the Developer Guarantee Fund, which provides for the introduction of an alternative to the liquidation of OREA solution consisting in the creation of DGF. The project assumes keeping OREA, offered without additional security while imposing on the developer the obligation to pay contributions to DGF regardless of the type of account selected.

At the same time, the proposed solution does not change the system of financing developers, thus preventing negative market phenomena indicated by the industry and the Ministry of Investment and Development. **The purpose of the changes is to increase the security of buyers' funds, not to weaken the develop-**

ment industry. The proposal to create DGF is the least possible interference in the market, while ensuring that the goal is achieved.

Summing up, **the project aims to create a comprehensive buyer payment protection system in Poland**, which would include the following solutions:

- creating the Developer Guarantee Fund (DGF) and imposing on the developer the obligation to pay contributions to this fund from payments made by the buyers to the Residential Escrow Account (REA);
- changing the catalogue of buyer payment protection measures by removing OREA offered with additional security in the form of an insurance or bank guarantee;
- clarifying the rules of making payments to REA by the buyer;
- clarifying the provisions regarding the bank's control powers and the rules of making payments from REA to the developer;
- imposing on the developer starting sales an obligation to have the consent of a creditor secured by a mortgage for the so-called unencumbered separation of the unit and transferring its ownership to the buyer, if such encumbrance exists;
- defining the rights and obligations of the parties to the development agreement in the event of the bankruptcy of the bank maintaining REA;
- clarifying the doubts regarding the application of the act to agreements also concluded in relation to apartments/houses with occupancy permits;
- regulating the rights and obligations of the parties to the reservation agreement;
- enabling the buyer to refuse acceptance due to material flaws found in the apartment;

⁷ Presented in the draft act amending the Act on protecting the rights of

buyers of apartments or single-family houses, which was referred for consul-

tation in May 2018.

- clarifying the acceptance procedure together with the consequences of the failure to remove the defect within the deadline set by the consumer.

The project also includes **a number of solutions supplementing this system**, i.e.:

- introducing the developer's obligation to provide an information prospectus to the person buying the apartment;⁸
- introduction of an additional annex to the prospectus in the form of a "plan of the area with the building marked";
- separating the investment task and assigning it the obligation to keep REA;
- establishing documents being the source of information about planned investments within a radius of 1 km from the property;
- including in the act the agreements on ownership or participation in the ownership of commercial premises (multi-unit parking, rooms intended for recreational purposes, bicycle boxes) and – to a limited extent – including sales agreements concluded with the buyer by a developer or an enterprise other than the developer.

All instruments proposed in the project are to create one complementary system, thanks to which the buyer, regardless of the type of REA chosen by the developer (as the decision is up to the developer), will receive a guarantee of security of his funds at the same level.

In connection with the proposed regulations, UOKiK conducted **a survey of the development** (housing) market, analysing, among others the scale of developer bankruptcies and residential escrow accounts offered by banks. Consultations were also conducted with the Ministry of Investment and Development, the Ministry of Finance and the Insurance Guarantee Fund.

The draft agreement was forwarded for consultation in December 2018.

Implementation of Regulation 2017/2394/EU of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for enforcing consumer protection laws and repealing Regulation 2006/2004/EC (CPC Regulation)

CPC regulation is to apply from 17 January 2020. Until then, it is necessary to implement new legislative solutions in national law, which will strengthen consumer protection through **more effective enforcement of consumer law** and ensure better compliance from entrepreneurs. Therefore, CPC regulation strengthens the powers of national authorities and harmonises the principles and procedures of their mutual cooperation in the field of consumer protection of a cross-border nature.

In 2018, UOKiK began preliminary work aimed at implementing CPC regulation into the Polish legal system. They include provisions regarding new competences of the President of UOKiK or other competent authorities, including in the scope of tracking financial flows and related data as well as the right to make test purchases of goods and services, including with hidden identity.

Draft assumptions for legislative changes introducing solutions for off-premises sales

In 2018, UOKiK analysed applicable laws and regulations regarding unfair practices in connection with concluding off-premises agreements in other EU countries. Bearing in mind the conclusions drawn from this analysis, as well as the situation in the Polish market of direct sales, **it proposed the following legislative changes:**

- the right to withdraw from the agreement for the provision of healthcare services or introduce, if justified, a prohibition to conclude agreements for the provision of healthcare services outside of business premises;

⁸ Previously, the prospectus would be issued at the request of the person interested in concluding a development agreement.

- a ban on selling medical goods outside of premises;
- a ban on selling medical products outside of premises;
- creating a register of entities conducting sales outside of premises;
- the obligation to notify presentations;
- criminal liability for concealing the commercial nature of presentation;
- a ban on selling electricity/gas outside of premises.

The proposed **solutions aim to eliminate or at least limit practices consisting in misleading the consumer, which are used by off-premises traders**. According to the information held by UOKiK, the effects of these unfair practices particularly affect consumers with the weakest market position, e.g. seniors. The introduction of new regulations will allow for effective market monitoring, strengthen consumer protection, and provide the opportunity to avoid the negative consequences of concluded agreements.

In 2018, preliminary consultations of the project took place as part of a working team appointed by the Social Committee of the Council of Ministers.

Legislative activities carried out on the initiative of other institutions

Draft act amending the Act on counteracting the unfair use of contractual advantage in the trade in agricultural and food products.

UOKiK called for changes in the justification and impact assessment of the regulations⁹ in connection with the solutions introduced in the draft, including regarding the change in the definition of contractual advantage.

As a result, the act covered all commercial relationships between the supplier **and the buyer regardless of the minimum turnover threshold or the total value of turnover between them**.

In addition, UOKiK proposed a change to art. 21 of the act. It resulted from the need to align the rights of the Trade Inspection controllers who carry out controls at the request of UOKiK¹⁰ with the rights of UOKiK employees authorised to carry out similar tasks. In such cases, TI acts pursuant to the Act on Trade Inspection of 15 December 2000 and the Entrepreneurs Law act.¹¹ However, their use is excluded if the control is performed by the employees of UOKiK pursuant to the Act on counteracting the unfair use of contractual advantage in the trade in agricultural and food products.

In order to enable UOKiK to commission to TI controls in a manner analogous to that provided for controls carried out in the course of proceedings regarding contractual advantage by employees of UOKiK, it was necessary to exclude the application of the provisions of the Entrepreneurs Law act also in relation to TI's control activities.

UOKiK's proposals were accepted. The act became effective on 11 December 2018.¹²

Act of 14 December 2018 amending the Aviation Law act and selected other acts¹³

In 2018, UOKiK actively participated in the legislative work on the act amending the Aviation Law act and selected other acts. The Office issued an opinion on this act in terms of compliance with the requirements of the Act on the out-of-court resolution of consumer disputes.¹⁴ The new aviation regulations introduce to the Polish system of out-of-court settlement of consumer disputes **the Passenger Rights Ombudsman at the President of the Civil Aviation Office**. This is a new, ADR-authorised public entity that will conduct proceedings

⁹ Impact assessment is one of appendices to the draft act, describing the results of the introduced regulations according to the cost and benefit analysis method.

¹⁰ According to art. 35 sec. 3 of the Act on competition and consumer protection, the President of the Office may order the Trade Inspection to carry out an inspection or other tasks falling

within its scope of activity.

¹¹ Entrepreneurs Law act of 6 March 2018 (Journal of Laws, 2018, item 646).

¹² Act of 4 October 2018 amending the Act on counteracting the unfair use of

contractual advantage in the trade in agricultural and food products (Journal of Laws, 2018, item 2203).

¹³ Journal of Laws, 2019, item 235. The act became effective on 1 April 2019.

on the out-of-court resolution of passenger disputes between: a passenger and an air carrier (regarding property claims arising from the provisions of Regulation No 261/2004/EC) and between an air carrier, tour operator or ticket seller (regarding property claims arising from the provisions of Regulation No 2111/2005/EC), in the case of flights from airports located in Poland and flights from third countries to these airports, operated by Community air carriers. The Ombudsman's task will be to enable the parties' positions to be brought closer together and to find a solution satisfactory to both of them, followed by concluding an agreement. **Passengers will be able to lodge complaints with the Ombudsman only after they have exhausted the possibility of complaining directly with the carrier.** Proceedings before the Ombudsman will be free.

Senate draft Act on providing services in the field of compensation claims

In July 2018, the Senate Budget and Public Finance Committee asked UOKiK to provide an opinion on the draft act prepared by senators on providing services in the field of compensation claims. This regulation aims to **define the principles of functioning for the so-called compensation offices which offer consumers assistance in claiming damages**, e.g. for traffic accidents or medical errors. The act is to specify the rights and obligations of the parties to agreements for pursuing damages arising out of the tort, as well as the rules for the acquisition and advertising of services in this regard.

In its position, UOKiK emphasised the need to enable consumers to more effectively pursue claims under insurance agreements, as well as to provide adequate protection to customers of compensation offices. It also drew attention to the issue of tort, as a source of compensation covered by the draft act, the definition of the terms "entrepreneur" and "consumer", the scope of the concept of "adviser" to legal advisers and lawyers, information obligations of the adviser to the consumer, mandatory elements of the agreement for compensation

claims or requirements as to the form of its conclusion. It was also pointed out that the individual solutions proposed in the project require a deeper analysis and clarification, including in particular the determination of the effects of legislative changes on the functioning of the market for this type of services.

In October 2018, the Senate draft was sent to the Sejm and forwarded to the parliamentary Justice and Human Rights Commission.

The act of 9 November 2018 amending selected acts in connection with strengthening the supervision over the financial market and investor protection on this market

The above act introduced changes to the Act on competition and consumer protection regarding **the extension of responsibility of persons managing companies**. These provisions constitute the legal basis for imposing a financial penalty on a manager responsible for violating the collective consumer interests and applying banned contractual provisions,¹⁴ in the amount of up to PLN 2,000,000 or up to PLN 5,000,000 in the case of financial institutions (until now a fine could be imposed on a manager only in cases of some restrictive agreements). This will allow a better enforcement of consumer protection regulations. Legislative changes were a response to practical situations that arise when entrepreneurs try to avoid liability by liquidating an enterprise and starting a business of the same or very similar nature as part of a new entity, without changing the make-up of its management authorities. The introduction of responsibility of persons managing enterprises in the case of applying prohibited contractual clauses in agreement templates and practices violating collective consumer interests will allow to eliminate or at least limit this phenomenon. In addition, it will contribute to increasing the coherence of the consumer protection system by introducing similar solutions for all major violations of the Act on competition and consumer protection.

¹⁴ Act on the out-of-court resolution of consumer disputes of 23 September

2016 (Journal of Laws, 2016, item 1823).
¹⁵ Until now, a manager could only be

fined in cases of for certain restrictive agreements.

The change proposed by UOKiK was related to **the extension of the make-up of the Polish Financial Supervision Authority with a representative of the President of the Office** who would participate in the meetings of the Commission in an advisory capacity. This was justified by the need to improve the cooperation between the Polish Financial Supervision Authority and UOKiK aimed at strengthening competition and consumer protection in financial markets. The Office's comment was taken into account and the act became effective on 1 January 2019.¹⁶

The act of 10 May 2018 amending the Telecommunications Law act and selected other acts¹⁷

In 2018, UOKiK continued work on a draft act amending the Telecommunications Law act and amending selected other acts. The Office pointed out **the need to harmonise the provisions regarding the withdrawal of consumers from agreements in the event of changes in its terms by means of remote communication**. Regulations in this area existed both in the current telecommunications law and in the Act on consumer rights. This led to different interpretations of the regulations by entrepreneurs. The Ministry of Digitisation agreed with the opinion of UOKiK, removing the provisions from the telecommunications law that led to a heterogeneous application of the law. The act became effective in December 2018.

SEE ALSO:

Amendment of the telecommunications law, Review of activities in section 3.1.2 devoted to practices infringing collective consumer interests and banned contractual clauses in agreement templates.

Draft act amending the Act on public collective transport and selected other acts

UOKiK questioned the solutions adopted in the draft as restricting competition and resulting in higher prices for consumers. In particular, the Office criticised the solution according to which passenger transport in the field of public collective transport other than public utility transport in road transport can be performed only in inter-province passenger transport. Adoption of this type of legislation preventing, among others organising commercial transport on routes between cities belonging to one province (e.g. between Warsaw and Modlin airport) seemed to be too far-reaching and insufficiently justified. It could lead to termination of operations of many micro and small enterprises unable to participate in tenders for servicing packages of communication lines. At the same time, market mechanisms in public road transport with a range of no more than one province could be eliminated, even where there was very high competition.

Comments were submitted by UOKiK at the stage of inter-ministerial consultations and the Standing Committee of the Council of Ministers. The Standing Committee removed the draft from the agenda for further consultations and presentation of the draft to the Joint Commission of the Government and Local Government.

¹⁶ The act of 9 November 2018 amending some acts in relation to the

strengthening of supervision over the financial market and protection of inve-

stors on this market (Journal of Laws, 2018, item 2243).

¹⁷ Journal of Laws 2018, item 1118).

3.1.2 International legislation

In addition to being active in the sphere of national legislation, UOKiK also undertakes legislative initiatives in the European Union. Representatives of the Office prepare positions of the Government of the Republic of Poland for draft EU regulations and participate in the work of EU Council working groups which negotiate in detail the provisions of draft European acts. In areas where UOKiK acts as a cooperating authority, it ensures adequate protection of the rules of competition and consumer interests.

Examples of UOKiK's activities in the field of international legislation

ECN+ Directive

In 2018, UOKiK participated in the work on ECN+ Directive conducted in the Council and the European Commission.

The purpose of the regulation is to strengthen national competition authorities in effective enforcement of EU regulations aimed at detecting anti-competitive agreements and preventing abuse of a dominant position.

This will create **a common area of competition law enforcement in EU Member States**. National authorities will be equipped with new tools and powers to guarantee them:

- independence in the enforcement of EU competition law;

- effective collection of evidence;
- effective punishment;
- coordinated leniency programmes.

The regulations also regulate the principles of mutual cooperation between national antitrust authorities and their contacts with the European Commission.

The draft directive was adopted on 11 December 2018.¹⁸

New Deal for Consumers

On April 11, 2018, the Commission published two legislative proposals forming the so-called **"New deal for consumers"**:

- Proposal for a Directive of the European Parliament and of the Council on representative actions to protect the collective consumer interests and repealing Directive 2009/22/EC.
- Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993,¹⁹ Directive 98/6/EC of the European Parliament and of the Council,²⁰ Directive 2005/29/EC of the European Parliament and of the Council²¹ and Directive 2011/83/EU of the European Parliament and of the Council²² with regard to better enforcement and modernisation of EU consumer protection rules (the so-called Omnibus Directive).

¹⁸ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 aimed at giving powers to competition protection authorities of the Member States to more effectively enforce the law and ensure the proper functioning of the internal market (EU OJ L2019:11.3).

¹⁹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21 April 1993, pp. 29-34).

²⁰ Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection by providing prices for products offered

to consumers (OJ L 80, 18 March 1998, pp. 27-31).

²¹ 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,

Directive 97/7/EC, 98/27/EC and 2002/6/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Directive on unfair commercial practices") (OJ 149L 149, 11 June 2005, pp. 22-39).

The legislative package proposed by the European Commission is one of the elements of implementing the Digital Single Market strategy. **Its purpose is to ensure that all European consumers can fully enjoy their rights under EU legislation.**

In EC's assessment, "New Deal for Consumers" will contribute to ensuring a high level of protection of consumer rights and the smooth functioning of the internet market, to the benefit of both consumers and entrepreneurs. The above objectives are to be achieved by modifying the principles of consumer rights protection and removing excessive burdens on the part of entrepreneurs.

Omnibus Directive

The European Commission, introducing **changes to four directives in the proposal on so-called the Omnibus Directive has indicated the following objectives:** a) more effective, proportionate and dissuasive sanctions for widespread cross-border infringements; the right of consumers to individual legal remedies; b) ensuring greater transparency of rules for consumers using on-line platforms; c) extension of consumer protection in the field of digital services; d) removing burdens from entrepreneurs; e) clarifying to Member States the scope of their freedom to adopt rules regarding certain forms and aspects of off-premises sales; f) clarification of the rules regarding misleading marketing activities in respect of dual quality products.

Representatives of the Office participated in intensive legislative work within the Working Group on Consumer Protection and Information in the Council. In May 2018, the position of the Government of the Republic of Poland for the proposal for the Omnibus Directive was adopted. From the Polish perspective, a particularly important issue was **the regulation of off-premises sales**. It may contribute to the limitation of practices consisting in the sale of goods or services during various "promotional presentations" organised, e.g. in hotels, shopping malls, festivals or during public events aimed, among others, at health promotion, and thus to increase the

level of protection for the particularly vulnerable consumer group of seniors.

Negotiations in the course of legislative work on the proposal led to the numerous postulates and suggestions submitted by UOKiK representatives.

Representative actions

UOKiK participated in legislative work on the draft directive on representative actions to protect the collective consumer interests. It assumed **the introduction of a new procedure combining elements of currently used orders to stop practices infringing collective consumer interests with collective dispute resolution**. The purpose of this legislative initiative was, among others, more effective enforcement of consumer law and increasing the effectiveness of pursuing claims by consumers in the event of infringements. The draft provided that the so-called authorised entities e.g. consumer organisations that meet the criteria set out in the directive will be able to take representative actions. They could request, among others, issuing an order to stop the infringement and compensation (e.g. damages, reimbursement of costs incurred, termination of the agreement, etc.). However, consumers would not be a party to the proceedings, but the authorised entity acting on their behalf. The draft also provides that an infringement of a company found in the final decision determining the representative action would not have to be proved by consumers in other proceedings for the second time. In 2018, 6 meetings of the working group on information and consumer protection were held, during which the provisions proposed in the draft directive were discussed.

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

The draft is a horizontal combination of 4 directives – framework directive, authorisation directive, access directive and universal service directive. Each of them

22 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 (OJ L 304,

22 November 2011, pp. 64-88).

is related to measures applicable to electronic communications networks and providers of these services. The Code also introduces a number of changes with regard to the rights of end users. UOKiK submitted numerous comments on the project, which concerned, among others, the need to provide pre-contractual information on a durable medium. The directive establishing the European Electronic Communications Code was adopted on 11 December 2018.²³

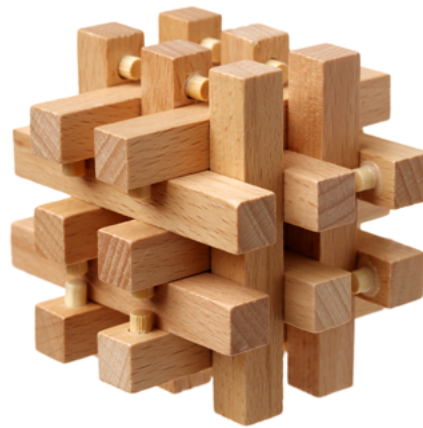
Proposal for a directive concerning certain aspects of agreements for the supply of digital content – “Directive on digital content”

The aim of the project was **to encourage more entrepreneurs, especially small and medium-sized ones, to cross-border online sales, increase consumer confidence and give them access to a wider range of material goods and digital content**. In 2018, work on the draft directive on digital content was carried out as part of inter-institutional consultations (so-called trilogues). UOKiK participated in issuing opinions on subsequent versions of the draft, commented on negotiating instructions provided by representatives of the Ministry of Justice, especially in the scope of agreeing on the mutual relationship between the provisions of the Directive on digital content and the European Code of Electronic Communications (EECC). At the end of 2018, technical arrangements were in progress regarding the wording of the final text of the Directive.

Draft directive on certain aspects of agreements for the sale of goods

The leading institution in the work on the project was the Ministry of Justice, with which UOKiK cooperated in this area.

The complex and unclear provisions of the Member States, including agreement law, and the lack of sufficient knowledge of consumers and entrepreneurs constitute a barrier to cross-border trade, especially online. Regulations at EU level only partially resolve the sale of goods – some of them are fully harmonised, e.g. information provided to consumers before the conclu-



sion of the agreement, the right to withdraw from the agreement in distance and off-premises agreements in the so-called time to reflect; for other issues, minimum harmonisation has been introduced, e.g. protection measures in the event of non-compliance of material things with the agreement.

Therefore, the adoption of a binding act of EU law introducing **complete (maximum) harmonisation** and concerning e-commerce and direct (face to face) material goods was to play an important role. The project regulates such issues as: compliance of the goods with the agreement, protection measures and the way of using them, as well as the burden of proof and the issue of commercial guarantees.

The most important issues from the Polish perspective include:

- means of protection;
- level of harmonisation;
- regulation of embedded digital content (intelligent goods);
- the seller's liability for non-compliance of the goods with the agreement.

In 2018, intensive work continued in the Council within several working groups, in December the general approach of the draft directive was adopted.

²³ UE OJ L 61 of 17 December 2018.

3.1.3 References for a preliminary ruling

The Office regularly monitors the judicial practice of the EU Court of Justice. In particular, preliminary ruling procedures are analysed, i.e. those in which the EU Court of Justice interprets EU law at the request of a national court. The Office examines the preliminary ruling proceedings in terms of the legitimacy of joining them in the event that a given judgment could affect Polish judicial practice.

In 2018, UOKiK **received over 40 new preliminary rulings** submitted by the CJEU in matters related to consumer cases.

Examples of UOKiK's activities in relation to preliminary ruling proceedings before the CJEU

Proceedings in case C-34/18 LOVASNÉ TÓTH

The Hungarian court formulated questions for a preliminary ruling to the CJEU aimed at determining whether the provisions of Directive 93/13/EEC on unfair terms in consumer agreements allow traders to **use a contractual clause in trade with consumers whereby the burden of proof is shifted to the consumer if he wants to assert his rights under the agreement**. The national court's doubts were based on a consumer case that sought the cancellation of a Swiss franc-denominated mortgage agreement for the purchase of an apartment.

The Hungarian court also noted that the unfair nature of the clause is evidenced by the fact that it directly influences the decision on how and to what extent the consumer will assert his rights against the creditor. There is a danger that the creditor terminates the agreement due to the consumer's failure to pay the debt amount under a unilateral decision of the bank, and that the debtor will have to pay the entire debt at once.

When presenting the analysis of the questions referred for a preliminary ruling, UOKiK drew attention to the fact that the issues which are the subject of doubts of the referring court are regulated in Poland in the Civil Code. According to it, in case of doubt it is considered that the unlawful contractual provisions are those which, in particular: grant the consumer's counterparty the right to make a binding interpretation of the agreement or grant only the consumer's counterparty the right to determine the compliance of the service with the agreement. When analysing the facts from the perspective of the aforementioned Directive 93/13/EEC, **the Office pointed out that "shifting the burden of proof" to the consumer seems unfair in all circumstances** and causes at least "a significant imbalance of the parties' rights and obligations arising from the agreement to the detriment of the consumer." In addition, it was emphasised that Hungarian regulations may restrict consumer rights in this respect by depriving them of the possibility to assert their rights in appropriate investigation proceedings. In this context, it was found that if, in the normal course of things, the consumer would be able to challenge the amount of debt in an examination of a civil law case that would follow adversarial principles and in accordance with the general rules on the burden of proof, preventing him from defending his rights at this stage and postponing this possibility, the enforcement stage should be considered as "limiting the consumer's right to bring an action," as referred to in point 1 letter q of the Annex to Directive 93/13/EEC.

In the conclusion, UOKiK stated that the judgment of the CJEU in case C-34/18, although it does not necessitate legislative changes to the provisions implementing Directive 93/13/EEC, may have an impact on the regulations regarding the nature of simplified court proceedings in which consumers' assertion of their rights is difficult, especially in the context of shifting the burden of proof to consumers. The judgment may also have an impact on the practice of applying the relevant provisions, in particular with regard to UOKiK's proceedings regarding the recognition as illegal of contractual provisions used in trade with consumers, as well as court proceedings pending as

a result of appeals against the Office's decisions in these matters. Considering the above conclusions, UOKiK considered it necessary to carefully analyse the further course of the case, but did not recommend the participation of the Government of the Republic of Poland in the written phase of this proceeding.

Proceedings in case C-266/18 AQUA MED

The proceedings were instigated by the District Court in Poznań, which aimed to determine whether the court's review by operation of law of **the abusive provisions** of the agreement concluded with the consumer regarding the issue of determining the court competent to hear the dispute should also include such provisions of the agreement that refer to national law. If the CJEU gave a positive answer to the question formulated in this way, the court also sought to determine whether the control undertaken by the court should lead to the application of the rules of jurisdiction in such a way as to ensure consumer protection resulting from the content of the directive, and thus the possibility of hearing the case by court located closest to the consumer's place of residence/permanent residence.

As part of the work on the position of Poland, **UOKiK recommended** presenting in the proceedings the interpretations according to which:

- the court's review of the abusiveness of contractual provisions may also include contractual provisions, which regulate the matter of the court's jurisdiction to settle the dispute between the parties, but only in such a way that they refer to the national law. It is up to the national court to assess whether the condition is unfair;
- the control undertaken by the court may lead to the application of the rules of jurisdiction in such a way as to ensure consumer protection resulting from the content of the directive, and thus the possibility of hearing the case by the court nearest to the consumer's place of residence/permanent residence.

However, the Office's proposed comments were not reflected in Poland's final position presented in the proceedings before the CJEU. Nevertheless, the decision adopted in the CJEU judgment, similarly to the position of UOKiK, indicated that the provisions of the agreement which only refer to the national law in a general way cannot be considered as reflecting the content of national provisions and are subject to examination for being abusive. The CJEU also assessed that, although the mere possibility of bringing an action against the consumer before the court competent for the place of performing the agreement and not the consumer's place of residence may not cause excessive limitation of the consumer's right to an effective remedy, however, if the action was brought before a court significantly distant from the consumer's place of residence and caused excessive costs on his side, such circumstances could deter him from appearing in court. The CJEU has recognised that it is for the national court examining the case to determine whether this applies in a particular case.

Proceedings in case C-419/18 and C483/18 PROFI CREDIT POLSKA ET AL.

The proceedings were instigated by the District Court for Warsaw Praga-South and the District Court in Opole. The request of the former court concerned the interpretation of the provisions of Directive 93/13/EEC and:

- the admissibility of securing the creditor's claims against the consumer with a blank bill of exchange;
- admissibility / obligation of the court to examine by operation of law whether the provisions of the loan agreement being the basic relation for a bill of exchange liability do not contain unfair terms also when the company bases its claim only on the bill of exchange relationship.

The latter court sought to determine whether the provisions of Directive 93/13/EEC and Directive 2008/48/EC should be interpreted in such a way that they oppose the interpretation of national provisions that the court

cannot act of its own motion when it has a strong and justified belief based on materials not derived from the parties to the case that the agreement constituting the source of the basic relationship is at least partially invalid, and the plaintiff pursues his claim from a blank bill of exchange, while the defendant does not raise charges and is passive.

In connection with the above, UOKiK proposed that Poland should present a position according to which:

- the provisions of Directive 93/13/EEC and Directive 2008/48/EC should be interpreted in such a way that they do not preclude the regulation of national law enabling the collateral of the claims of the company lender against the consumer borrower by means of a blank bill of exchange, insofar as the court is able to examine the content of the basic relationship by operation of law;
- the provisions of Directive 93/13/EEC should be interpreted in such a way that they impose an obligation on the court to examine by operation of law whether the provisions of the agreement shaping the basic relationship for a bill of exchange obligation do not contain unfair contractual terms, also when the claimant is based solely on the blank bill of exchange relationship;
- the provisions of Directive 93/13/EEC and Directive 2008/48/EC should be interpreted in such a way that they preclude such an understanding of the national provisions on obligations under a bill of exchange, which does not allow the court to act by operation of law in a situation where it has strong and justified belief based on materials not derived from the parties to the case that the agreement constituting the source of the basic relationship is at least partly invalid, and the plaintiff pursues his claim under a blank bill of exchange, while the defendant does not raise any charges and is passive.

The interpretation of regulations proposed by UOKiK was reflected in Poland's position presented in the proceedings before the CJEU.

Proceedings in case C-260/18 DZIUBAK

The proceedings before the CJEU were instigated by the District Court in Warsaw. The court formulated questions regarding the interpretation of the provisions of Council Directive 93/13/EEC on unfair terms in consumer agreements. **The content of the application aimed to obtain answers the following questions:**

1. Is art. 1 sec. 2 and art. 6 sec. 1 of Directive 93/13 EEC allows for the assumption that if **the effect of declaring certain contractual provisions** that determine the manner of performance by the parties to be unfair would result in the collapse of the entire agreement for the consumer, it is possible to fill gaps in the agreement not based on a disposable provision constituting an unequivocal replacement of the unfair condition, but based on the provisions of national law, which provide for supplementing the effects of a legal act expressed in its content also by effects arising from the principles of equity (principles of social coexistence) or common customs?
2. Should a possible assessment of the effects of **the entire contract's failure** for the consumer take place taking into account the circumstances existing at the time of its conclusion, or at the time of dispute between the parties regarding the validity of a given clause (reliance by the consumer on its abusiveness) and what is the significance of the position expressed in the course of such dispute by the consumer?
3. Is it possible to maintain the provisions constituting unfair agreement terms under Directive 93/13 EEC, if the adoption of such a solution would be objectively beneficial to the consumer at the time the dispute is resolved?
4. In the light of the wording of art. 6 sec. 1 of Directive 93/13, the recognition of contractual provisions specifying the amount and manner of performance by the parties as unfair may lead to a situation in which the legal relationship determined on the basis of the content of the agreement – apart from the effects of unfair terms – deviates from the intention of the parties in scope covering the main performance by the parties? In particu-

lar – does the recognition of a contractual provision as unfair mean that it is possible to continue to use other contractual provisions, not allegedly abusive, defining the main benefit of the consumer, whose shape agreed by the parties (introducing them to the agreement) was inextricably linked to the provision challenged by the consumer?

In the course of work on the Polish position, UOKiK proposed the following responses to the questions referred for a preliminary ruling:

- Art. 1 sec. 2 and art. 6 sec. 1 of Directive 93/13/EEC precludes the assumption that if the effect of declaring certain contractual provisions determining the manner in which the parties perform the services is the collapse of the entire agreement, unfavourable for the consumer, it is possible to fill gaps in the agreement not based on a disposable provision constituting an unequivocal replacement of an unfair condition, but based on the provisions of national law, which provide for supplementing the effects of a legal act expressed in its content also by effects arising from the principles of equity (principles of social coexistence) or established habits;
- the assessment of the effects of the collapse of the entire agreement expressed by the consumer after having been instructed by the court about all effects should be taken into account by the court when deciding on the effects of an abusive provision. It is possible to maintain the provisions constituting unfair contractual terms pursuant to the provisions of Directive 93/13/EEC, if the adoption of such a solution would be beneficial at the time of the settlement of the dispute, according to the consumer's assessment, and the consumer was previously instructed by the court about all effects of considering these conditions to be unfair and opposed these effects.

UOKiK's proposal was reflected in Poland's position presented in the proceedings.

Proceedings in case C-383/18 LEXITOR

The proceedings before the CJEU were instigated by the District Court for Lublin-East. The court sought to determine whether the interpretation of the provision contained in art. 16 sec. 1 in connection from art. 3 point g of Directive 2008/48/EC should be made in such a way that the consumer, in the event of **earlier repayment of his obligations** arising from a loan agreement, is entitled to a reduction in the total cost of the loan, including costs whose amount does not depend on the duration of this loan agreement. The question raised by the court is important from the point of view of the trading practice. The experience of UOKiK shows that, in the event of an earlier repayment of a consumer loan by borrowers, a significant part of lenders do not reduce the total cost of the loan by those costs that according to lenders are not dependent on the lending term. This problem mainly concerns commissions and the so-called preparation fees. Currently, UOKiK is conducting a number of proceedings regarding lenders' failure to comply with the provisions of Art. 49 sec. 1 of the Consumer Credit act. Considering the above, as part of the work on Poland's position in the proceedings by the CJEU, the Office proposed a positive answer to the question posed by the referring court. The interpretation of the provisions of Directive 2008/48/EC presented by UOKiK was reflected in the content of Poland's position.



3.2 Social surveys and market analysis

UOKiK conducts market research to obtain valuable information on the market's structure, level of competition and degree of concentration. They provide and systematise knowledge on individual sectors, strengthening the transparency of economy. They provide for intervention in the event of infringements.

Market research and analyses

The research has a diverse scope, both in terms of its subject matter and geographical scope. They can be extensive analyses, covering entire markets or sectors, but they can also focus on only one specific problem, significant from the point of view of consumers or the operation of competition in the market. The most frequently analysed markets are those in which there is a greater likelihood of market threats.

The analyses are conducted in the form of questions addressed to entrepreneurs operating on a given market. Research with their participation is necessary and very important, because these are the entrepreneurs who are the authentic and reliable source of information about their relations with competitors.

UOKiK may conduct explanatory proceedings as market research in both the area of competition and consumer protection. The problems analysed as part of some studies simultaneously affect the state of competition in the market and the situation of consumers, hence their results can be used in the implementation of the Office's statutory tasks in both of these areas.

Market research* aimed at gathering information on individual markets, in particular to identify possible distortions of competition or the threat of their occurrence, or to analyse their impact on the interests of consumers

	Instigated in 2018	Completed in 2018
National research	12	10
Local research	10	4

* Market research is conducted in the form of separate explanatory proceedings and is classified as separate cases (independent of the explanatory proceedings conducted in the field of competition and consumer protection).

In 2018, UOKiK started **12** nationwide proceedings aimed at gathering information on individual markets. They were used to identify possible distortions of competition or the threat of their occurrence, or to analyse their impact on consumer interests. In addition, **10** local studies were initiated.

10 national and **4** local proceedings were completed, including those regarding the car insurance market, press printing market and investment funds.

Examples of studies initiated in 2018

Local

- Market research of public tenders related to the spending of EU funds as part of ROP for Lubuskie Province 2014-2020 (POPT);
- Research on the local market of winter sports services to determine its structure and degree of concentration.

National

- Research on the market of agreements concluded off-premises;
- Research on the state of competition and concentration in the market of the production and marketing everyday footwear throughout the country;
- Research on the national market of brokering claims for damages;
- Examination of the national market for certification of psychotherapeutic authorisations in order to determine its structure and degree of concentration;
- Market research on the market of fruit purchasing and processing.

Separate research is conducted as part of concentration proceedings. When the intention to concentrate is notified to UOKiK, e.g. in the form of a merger of two companies or the acquisition of one company by another, the Office considers the impact of such transaction on the state of competition in the market. For this purpose, the data necessary to determine market position of the participants of the concentration and their competitors are collected, and the opinions of other entities operating in the market are analysed, in particular as regards their assessment of the examined concentration.

UOKiK publishes reports only from those market studies that may be relevant from the public's point of view, and those for which a public version can be prepared.

Market research can be found at
www.uokik.gov.pl/analizy_rynku2.php.

Car insurance market research

The explanatory proceedings regarding the car insurance market survey were instigated by UOKiK in November 2016, and in 2018, a report summarising the study was published.²⁴ The impulse for the Office to take action were the incoming complaints, including parliamentary questions regarding significant **increases in the price of civil liability insurance, and accident and theft insurance**. It aimed to clarify the reasons for the increases and to identify which consumer groups incurred the largest costs in connection with them. The study covered the years 2012-2016.

The direct stimulus to introduce increases was the position from PFSA Chairman dated 28 September 2015 addressed to all insurance companies operating in groups 3 and 10 of section II. However, the increases themselves were a consequence of the imbalance between costs and revenues in the field of car insurance and had to occur sooner or later. The actions of insurers, in particular the increase in prices, could be explained by the independent activity of rational economic entities.

At the same time, the results of the research did not provide grounds to conclude that the reason for the price increase was collusion between insurers. The civil liability insurance market is characterised by a relatively large number of suppliers, a far-reaching individualisation of prices, and the possibility for foreign suppliers to enter the market, which is not conducive to concluding and maintaining price collusion. Price changes were introduced by individual companies at different periods, so the price strategies of insurers were increasingly different from each other, and the stability of market shares was decreasing. The market picture emerging from the analysis during the increases period therefore pointed to independent attempts to find individual strategies that would allow insurers to return to profitability, rather than their coordinated efforts to raise prices.

The study of the impact of price changes on individual customer groups showed above all that the young age of drivers is by far the most important factor influencing the scale of price changes. As a rule, consumers from this group experienced the largest decrease in prices during the period of intense competition, but they also faced by far the largest increases in the period when prices were raised. In addition, the accident rate did not have a significant impact on the level of civil liability insurance prices.

Market research for press printing houses

The research of the press printing market was carried out in 2017-2018 in connection with signals coming to UOKiK about its **significant concentration**. The main purpose of the analysis was to identify the largest entities operating on this market and to determine its structure by entities.

The information gathered shows that within the broadly understood market of press printing, the relevant market for press printing in coldset and heatset/rotogravure technology should be distinguished. The arguments for such a market split are therefore primarily based on the technological differences.

²⁴ The report on the car insurance market research is available at: <https://www.uokik.gov.pl/download.php?plik=22002>.

According to the study, in geographical terms, printers operating on the heatset/rotogravure printing press market compete at the national level, which is due to the nature of the products they print, i.e. magazines. In contrast, printers using coldset technologies compete at the regional, rather than national level.

The analysis showed that the studied press printing markets are highly concentrated. There are 7 coldset printing companies operating at the national level. There are two dominant entities belonging to Agora and Polska Press. Shares of both entities in the years 2015-2016 were in the range of 30-40 pct. On the other hand, the heatset/rotogravure printing press market is dominated by one entity, i.e. LSC. The share of this company (calculated for sales outside of the group of companies) were in the range of 60-70 pct. The share of the second largest entity, Quad Graphics, were in the range of 10-20 pct, while the remaining entities did not exceed 10 pct. There were also other significant production capacities on this market, but they were used for internal needs.

Information on the results of the study was published in 2019.²⁵

Investment fund market research with particular emphasis on products for private individuals

The main goal of the study was to identify the specifics of the investment product market offered to private individuals by investment fund companies in the years 2012-2015. The analysis also includes issues related to consumer protection in this market.

The collected information shows that in the controlled period, **the investment fund market in Poland was subject to a process of dynamic development**. At the same time, its entity and product structure changed. The value of assets managed by investment funds, which is the basic measure of the size of the market, increased in 2012-2015 by 80.1 pct, from PLN 146.8 bn to PLN 264.3 bn.

The changes in entities observed on the investment fund market did not significantly impact the level of concentration on a broadly defined market. However, analysing its individual segments and taking into account the statutory division, a higher level of concentration was found. From the perspective of protecting the competition, particular attention should be paid to the market of closed-ended funds. Due to the risk of very high concentration in this market segment, it should be subject to further monitoring by the Office of Competition and Consumer Protection.

The study summary was published in 2018.²⁶

Social surveys

UOKiK commissions social surveys in the field of knowledge of consumer rights and competition law. Their purpose is to get to know the level of knowledge on selected legal issues, and analysing the barriers obstructing safe and satisfactory market participation. Monitoring consumer attitudes and the level of consumer confidence in individual markets is equally important. The research results are used to define those areas that require intervention or legislative changes. They are also important for information and educational activities as well as improving cooperation with stakeholders.

In December 2018, **a survey on Poles' investments was carried out**,²⁷ primarily in terms of financial products. The results show that the most popular products are the ones that are the most recognisable by Poles, with a fairly standard character, including savings and current accounts or life insurances. Consumers have the lowest knowledge and understanding of investment products. They are also perceived as the most risky. It should be noted that Poles are not too willing to risk in the area of finance. 55 pct declare that they do not accept any risk, and 42 pct of respondents would be able to accept small or medium risk, provided that they recover all or most of the money invested.

²⁵ Information on the results of the study of the market of printing houses is available on UOKiK's website, at: <https://www.uokik.gov.pl/download.php?plik=23079>.

²⁶ The summary of the study of the investment fund market is available at: <https://www.uokik.gov.pl/download.php?id=19053>.

²⁷ The study was conducted by Kantar Polska S.A. on a representative sample of 1058 residents of Poland aged 15 and more; computer-assisted personal interviewing (CAPI). In addition,

301 computer-assisted telephone interviews (CATI) were carried out among Poles who declared holding investment products.

3.3 Information and educational activities



UOKiK's information and education activities include, among others educational projects, events, competitions and cooperation with the media. The Office conducts publishing activities as well as thematic websites.

WEBSITES

www.uokik.gov.pl

8 098 796

unique views in 2018

source of news and information about UOKiK, including in the scope of: consumer warnings, decisions of the President of UOKiK and significant views in the matter. The Public Information Bulletin (BIP) is available on the Office's website. In 2018, UOKiK received 679 requests for public information.

www.konkurencja.uokik.gov.pl

48 275

unique views in 2018

a collection of information on the main activities of UOKiK on competition restricting practices, including the presentation of the leniency programme and the protection of whistleblowers.

www.przewagakontraktowa.uokik.gov.pl

6711

unique views in 2018

unique views in 2018 – a source of information on UOKiK's activities in preventing unfair use of contractual advantage in trade in agricultural and food products.

www.finance.uokik.gov.pl

82 566

unique views in 2018

a compendium of knowledge about the situation on the Swiss franc mortgage market, insurances with an insurance capital fund and bonds.

www.polubowne.uokik.gov.pl

26 667

unique views in 2018

presentation of the principles of functioning of the out-of-court ADR dispute resolution system, including practical tips for consumers.

www.prawakonsumenta.uokik.gov.pl

1 751 300

unique views in 2018

a knowledge base on consumer rights, including the right to information, complaints and withdrawal from the agreement.

Information and educational projects

Aware contracting authority – competition law in public tenders

The Office continued training in the field of bid collusion through the e-learning platform www.szukoleniazmowy.uokik.gov.pl. In 2018, over 2,800 people registered on the platform. The activities are part of the “Informed contracting authority – competition law in public tenders” project funded by the European Social Fund under the Operational Programme Knowledge Education Development 2014-2020. Online training will be available until June 2020. The platform contains 5 lesson modules, thanks to which the organisers/participants of tenders can learn what collusions are, how to learn to detect them, who to notify in case of suspicion that an unlawful agreement is in place.

Activities for seniors

The experience of UOKiK shows that seniors are most often exposed to unfair practices during sales presentations in hotels, health resorts, etc., as well as during salesmen's visits. Some salesmen urge the elderly to buy sets of pots, linen, or paramedical devices, usually at extremely inflated prices or without the features presented. Other sellers, in turn, come seniors' homes and offer them lower bills for gas, electricity or telephone, suggesting that they represent the current provider of these services. Their actions expose consumers to unknowingly breaking their agreements and suffering severe financial losses. In 2018, UOKiK carried out **2 information campaigns**, highlighting this type of unfair sales practices, as well as reminding about the 14-day right to withdraw from agreements made remotely or off-premises.

The first information campaign – “Seniors, be careful” – was based on messages in the form of animated infographics. Activities were launched on 15 March, i.e. on the World Consumer Day. Materials were broadcast from

March to June, among others on the radio, television and in public transport, courtesy of partners who agreed to broadcast on non-commercial terms.²⁸ Province Trade Inspection inspectorates, local media and other entities, e.g. health resorts, also joined the campaign. The second action under the slogan **“Don't be fooled, seniors”** was carried out jointly by UOKiK, Polish Police Headquarters, Social Security Office (ZUS) and Agricultural Social Security Fund. As part of the agreement signed on 26 November 2018, the Office prepared over 350,000 leaflets, which were distributed by the Police, ZUS, and KRUS. In addition, the Office provided over 3,000 posters to be made available at the offices of ZUS and KRUS, i.e. places frequently visited by seniors.

UOKiK was also involved in events for seniors organised by other institutions. The office was one of the partners of the **“Senior's Day”** organised by ZUS on 26 October 2018, together with the Polish Association of Retirees, Pensioners and Persons with Disabilities. The theme of the event was the security and legal awareness of the elderly.

In addition, the President of **UOKiK granted 18 honorary patronages** to events in the field of competition and consumer protection that took place in 2018.

Training activity

As in previous years, UOKiK was involved in the dissemination of knowledge on competition and consumer protection, in particular the practical application of the provisions in this respect. As part of cooperation with institutions responsible for the proper functioning of the public procurement system, training sessions were organised during which representatives of the Office presented the issues of preventing and combating bid rigging. These meetings were held, among others at the Public Procurement Office, the Polish Police Headquarters and the Prosecutor's Office. In turn, workshops on consumer issues were conducted for teachers and high school students, students of the Third Age Universities, entrepreneurs, and representatives of local authorities.

28 Television: ITI Neovision, Kino Polska, Polsat, Republika S.A., Stoptlatka TV, Telewizja Polska, Telewizja Puls, TVN; radio: CEM Spes Media Group,

Grupa Polskie Rozgłoszenie Akademickie, Polskie Radio, RMF; **LCD screens and online publications:** Kasa Rolniczego Ubezpieczenia Społecznego, Warsaw

Underground, MPK Łódź, MPK Wrocław, MZA Warsaw, MZK Zielona Góra, Polskie Koleje Państwowe, Poczta Polska, Urząd Miasta Łodzi, Tesco Polska, Wirtualna

Polska, Social Security Office.

Events and competitions

Congress “Who creates the digital consumer?”

The two-day congress accompanied the celebration of **the World Consumer Day**. The event was organised by the Office of Competition and Consumer Protection, the Senate Consumer Protection Team and the Federation of Consumers. The event was held under the honorary patronage of Deputy Prime Minister Beata Szydło. During the meeting, the participants discussed the challenges posed by the Internet and modern technologies to the institutions protecting consumers. Panels and workshops were dedicated to personal data protection, on-line shops, new financial and telecommunications services, ADR system. During the event, the second edition of the *Amicus Consumantium* competition, organised by UOKiK and the Senate Consumer Protection Team, was concluded. The title was awarded to three entrepreneurs who in 2017 popularised the idea of amicable settlement of consumer disputes.

Workshops – economy in competition law

This is a continuation of the initiative undertaken in 2017. The meetings were organised in cooperation with the Competition Law Association and Compass Lexecon. In February and June 2018, **IV and V workshops under these series took place**.

IV workshop was devoted to **vertical concentrations**, including the role of economy in the process of controlling them, as well as economic tools for assessing the effects of vertical concentrations. The problems of V workshop were related to **horizontal concentrations**. The most important economic tools for their assessment and the latest trends in concentration control in the European Union were discussed.

Civic consumer dialogue “New deal for Consumers”

On 18 October, Poland hosted the “New Deal for Consumers” civic consumer dialogue. The event was organised by the Representation of the European Commission in Poland and the Office of Competition and Consumer

Protection as part of the discussions held in EU Member States. The meeting was devoted to **the package of EC regulatory changes in the area of consumer protection**, in particular the Polish perspective on the directive on representative actions, the horizontal directive on consumer protection rules, as well as the issue of double quality. At the initiative of UOKiK, the dialogue took place in an open formula, with the participation of a large audience. Representatives of EC, UOKiK, consumer organisations, experts and consumers took part in the discussion.

“Competition in the Digital Era” conference

On December 5, UOKiK organised a conference on the occasion of **the World Competition Day**. The event's partners were: the Competition Law Association and Positive Competition. During the meeting, issues related to the application of competition law and economy in the context of online platforms, price algorithms and new technologies (including blockchain) were discussed. In addition, new solutions in Polish antitrust law were discussed in the light of EU regulations: the directive on effective enforcement of the rules of competition – ECN+ and the directive on the protection of persons reporting violations of EU law. The discussion also concerned legal, procedural and material tools, and the effectiveness of programmes for whistleblowers.

XV Jubilee Wielkopolska Province Knowledge Contest on Consumer Knowledge

The finals of the contest took place on April 12 in Poznań. Its organisers were: UOKiK delegation in Poznań, the local government of Wielkopolska Province, the Poznań branch of the Consumer Federation, Wielkopolska Province Inspector of Trade Inspection, district and municipal consumer ombudsmen and the districts of Wielkopolska province. The sponsors of the competition also included the Financial Ombudsman and the Insurance Education Foundation. **Over 400 secondary school students** took part in the qualifiers, and 48 of them went to the finals. The winners, for the second time were a student of the Secondary School Complex in Sompolno and Konin district in the team classification.

UOKiK for the media

164

issued press releases

10

press conferences

546

tweets (2.75 mn views)

Media about UOKiK

9170

press articles

42 749

online publications

4380

radio and television materials

41 329

mentions of UOKiK, among others on Twitter, Facebook

Competition for the best master's and doctoral paper

UOKiK organises an annual competition for the best master's thesis in the area of competition and consumer protection, while every 3 years it also organises a competition for the best doctoral dissertation. Graduates of law and other faculties – economy, administration or management – can take part in the competition. In 2018, UOKiK awarded a total of **five masters papers**, and distinguished two.

Publishing activities

UOKiK develops, publishes and distributes educational and informational publishing items. All publications are available on UOKiK website, where their electronic versions can be downloaded and free delivery of selected items can be ordered.

In 2018, as part of activities addressed to seniors, UOKiK prepared the leaflet **"Don't be fooled, seniors"** accompanying the information campaign described above

under the same title. In addition, a guide on consumer rights was published in the context of the risks associated with direct sales by sales representatives – **"I have a great offer for you."** This is one of three publications developed by non-governmental organisations as part of UOKiK's competition. Others include a book for children on basic consumer rights **"Come, I'll tell you a story"** and a guide for young people **"I consciously enter the financial market."**

UOKiK also published two works awarded in the competition of the President of UOKiK for the best master's thesis: in the field of competition protection – "Competition protection and intellectual property in new technology markets" and consumer protection – "Consumer's right to court." In addition, it published a doctoral dissertation on competition protection entitled "Ordoliberalism and Keynesianism – two contradictory concepts in the economic policy of post-war Germany."

In 2018, UOKiK printed the following leaflets: "Out-of-court settlement of ADR consumer disputes," "Abusive clauses," "Consumer assistance," "Warranty."

Cooperation with the media

UOKiK regularly informs the public about its activities by publishing press releases on its website and providing them to the media. **Over 64 pct of press information concerned matters related to consumer protection**, including the results of the control of the Trade Inspection. The Office also has a Twitter profile – the number of entries increased compared to 2017 by 62 pct. It also conducts information campaigns on it, in 2018 it was, among others “Consumer Day of the Second Republic of Poland” on the occasion of Independence Day and a series of graphics with New Year’s Eve tips.

Representatives of the Office regularly participate in the broadcasts “Money does not sleep” on Channel I of the Polish Radio, breakfast television show “Question for breakfast” (TVP2) and “Good morning TVN.”

In addition, the campaign **“Before holidays – what is worth knowing?”** was launched for the ninth time, coordinated by UOKiK. In 2018, a record number of institutions took part in it – 53. Among them were 8 ministries, offices (e.g. UKE, ERO, ULC, UODO), consumer institutions (Financial Ombudsman, ECC, all WIHs), as well as NFZ, Police, Fire Department, Border Guard. The purpose of the joint initiative was to remind consumers going on holiday about their rights and to give practical advice in a wide range of areas. As part of the campaign, the Office prepared a guide to new regulations on tourist events.

Another topic raised in the information activities was **the rights of seniors** in the dispute with dishonest sellers of electricity, gas or telecommunications services. Aquila Association was the partner of the campaign.

UOKiK also informed about the rights of consumers shopping at sales presentations, control of anti-smog masks and carbon monoxide detectors as well as the results of the “Toys without toxins” campaign.

3.4 International cooperation

An important aspect of UOKiK’s activities is cooperation with institutions and organisations from other countries. It takes place both in a horizontal perspective and within narrower areas related to a given market sector. The Office’s international activity also concerns state aid and market control and supervision. The Office also hosts representatives of foreign delegations interested in the functioning of the competition and consumer protection system in Poland.

As a Member State of the European Union, Poland participates in the EU decision-making process and implements close cooperation with other EU members and institutions. UOKiK is involved in working groups, including the creation of EU legal standards.

Cooperation for consumer protection

Consumer Policy Network (CPN)

CPN meetings, organised by the European Commission several times a year for representatives of European offices responsible for consumer protection, are a platform for the exchange of experience in the field of the most current horizontal issues related to the consumer area, both at EU and national level.

The first of the meetings planned for 2018, in which representatives of UOKiK took part, was on 23-24 January in Brussels. In addition to the review of the current European policies in the field of consumer protection, the achievements of the Estonian presidency, which coordinated the work of the EU Council, were summarised and the assumptions of the new Bulgarian presidency were presented. During this meeting, a representative of the Commission presented a new legislative initiative – **New Deal for Consumers**. It is the result of a thorough analysis of European law in the field of consumer protection and the desire to protect consumers against similar challenges that have occurred in the past, e.g.

in the automotive sector. The preliminary results of the Consumer Programme evaluation which was in progress at that time were also discussed. This event was combined with the next meeting of the European Consumer Consultative Group (ECCG), discussing new ways to stimulate the consumer movement. Comments were also exchanged on how to organise and evaluate consumer dialogues, i.e. meetings of those responsible for creating public policies with consumers.

A special CPN meeting was held in Lisbon on 14-15 June. In addition to the standard discussion of issues related to current consumer policy, **workshops on behavioural economy** were conducted. Substantive discussions began on New Deal for Consumers and on priorities in the future consumer protection. The meeting was also an opportunity to present the latest changes in consumer policies introduced in Portugal.

The next scheduled meeting was held on 7 November in Brussels. Unlike the January meeting, this time the focus was on more specific consumer issues, mainly **the topics related to electronic economy**. Specialist workshops were conducted to take into account the needs of consumers with special sensitivity, e.g. due to age or other characteristics, thanks to which institutions are to pay more attention to the needs of these groups. During one of the sessions, another discussion took place regarding the New Deal for Consumers package, initiated in January 2018. An important point of the meeting were the talks about the changes being introduced to the European law.

Consumer Financial Programme Committee – CFPC

The European Commission sets annual plans for the implementation of consumer policy under the multi-annual consumer protection programme. They are reviewed during meetings of the Consumer Financial Programme Committee – an advisory committee composed of representatives of all EU Member States. The multi-annual consumer protection programme for the years 2014-2020 was established by the Regulation of the EP and the Council of 26 February 2014 on the multi-annual consumer programme for the years 2014-2020 and repealing Decision No. 1926/2006/EC.

The main purpose of the meeting was **to discuss the principles of financing projects and other activities related to consumer protection**. The current status of the programme's implementation was summarised and directions for the future were outlined. A representative of UOKiK presented the activities and the importance of the European Consumer Centre, which has operated within the structures of UOKiK since March 2018.

International Consumer Protection and Enforcement Network – ICPEN

ICPEN is an organisation of consumer protection authorities from over 60 countries. The network is used to exchange information on market practices with a cross-border dimension that may have a negative impact on consumers' interests. As part of it, cooperation between offices responsible for implementing consumer regulations is also promoted.

In 2018, the President of UOKiK, as part of the Office's membership in this organisation, took part in the annual High Level Meeting organised by the Turkish presidency of ICPEN. The meeting was held under the slogan "Bridging enforcers for powerful consumers." The event was devoted to issues of **strengthening practical cooperation** between various law enforcement bodies, in particular how to conduct joint activities under ICPEN and current issues in the field of consumer protection of a cross-border nature.

UOKiK representatives also took part in the ICPEN workshop organised by Zambia, which took over the presidency after Turkey. Their main topic was, among other, **presentation of the tools used by unreliable entrepreneurs** manipulating product quality and a summary of the experience of ICPEN members regarding problems reported by consumers using various electronic payment systems. The issue of raising the qualifications of persons applying the law in the scope of identifying infringements of consumer rights that may occur online was also raised. During meetings in small groups, consumer education was discussed, its proper conduct, factors supporting it, as well as factors obstructing the development of consumer awareness of citizens.

Cooperation for the protection of competition

European Commission

In 2018, meetings of the European Commission working group on competition were held regularly. During its meetings, the Member States were informed both of international cooperation issues and of specific and practical issues for the EU, e.g. **international agreements negotiated by the European Union**. Furthermore, European legislation was prepared in the field of competition protection and the most important events aimed at promotion and dialogue on compliance with the rules of competition in European markets. In terms of the latter issue, the most important conclusions from major international conferences were presented, regarding e.g. competition protection in the face of Internet corporations.

Council of the European Union

In May 2018, the Bulgarian Presidency of the EU Council organised the European Competition Day in Sofia, which was attended by, among others, the President of UOKiK. Conference participants **debated during three sessions**, which were devoted to the following issues: ECN+ directive and benefits of the new regulation; competition law on the electricity market; repairing damages in competition law – consequences of applying the Compensation Directive. Due to the fact that it was a high-level meeting, future rules for coordinating the activities of law enforcement bodies were established.

European Competition Network – ECN

Meetings in the framework of the Cooperation Issues and Due Process Working Group serve to coordinate the activities of competition protection authorities. The meetings discussed in 2018 included a proposal to present members of the network with **a special questionnaire regarding searches** carried out by competition authorities. Once the content is accepted by the working group, it will be forwarded to the Member States. In 2019, the data included in the form will be used to prepare a special report, and the Polish representative will be one of the participants managing the reporting group.

Detailed issues regarding **cooperation in the field of informal RFIs (Requests For Information)** were also presented, e.g. requests for information on the applicable legal order or practice of law application. Furthermore, progress in the implementation of ECN+ directive by Member States was discussed.

In 2018, UOKiK was an active member of ECN network. 6 RFIs were sent via the IT system made available by the European Commission – these were mainly requests for information on competition law regulations in a given Member State, and several dozen responses to RFIs were sent to the Office.

During the plenary meetings of ECN network organised twice a year, UOKiK representatives got to know the guidelines on how the competition authorities implemented new European regulations, in particular **in the field of personal data protection**. The expected effects of introducing ECN+ directive for competition protection authorities were also presented. The results of the internal audit carried out in DG COMP (Directorate General responsible for competition) were also presented and the issue of improved cooperation between competition authorities was raised.

European Competition Authorities Meeting (ECA Meeting)

At the annual meeting of the heads of antitrust offices of the European Competition Authorities (ECA), the current issues related to competition protection were discussed. It was an opportunity to exchange views and experiences on policy and the application of competition law in Europe.

The subject of the meeting was primarily to discuss **the functioning of the pharmaceutical market** in Europe, including trends on this market as well as the risk of prices being too high. Challenges related to the progressive **digitisation of the economy** were also discussed. In this context, the possibilities of enforcing the principles of equal and effective competition were examined. Instruments for effectively dealing with challenges related to technological progress were discussed, including mainly adaptation of the current legal system to the changes occurring in the economy.

International Competition Network – ICN

The International Competition Network (ICN) is a platform for cooperation and exchange of experiences of over 130 competition protection authorities from around the world. UOKiK participates in the work of **five network working groups** on cartels, unilateral market practices, the effectiveness of antitrust offices, promotion of antitrust law, and concentration control. The network also deals with supporting smaller and junior competition protection agencies and encouraging NGO experts to increase cooperation with entities dealing with competition protection. It should be noted that the annual ICN conference is the most important event organised by the network, gathering representatives of antitrust offices and legal professionals from around the world.

During the annual conference organised in 2018 in New Delhi, in addition to panels related to general antitrust issues and control of concentration, **a number of discussions** related directly to the current practical activity of antitrust authorities took place. The conference participants were presidents and managers of antitrust offices from around the world, including France, Germany, USA, the Netherlands and Australia. There were many partner discussions on ways to improve the way advocacy activities are carried out (in particular campaigns promoting knowledge in the field of competition protection) and how to conduct an effective information and education policy using digital tools. During the meeting, the document illustrating the ICN's greatest achievements in recent years was discussed in detail; it clearly highlights the studies provided to the members of ICN and can provide significant assistance in the performance of the tasks.

Competition Protection Committee of the Organisation for Economic Cooperation and Development – OECD

The annual meeting of the OECD Competition Protection Committee took place in Paris on 4-8 June 2018. During those days, groups dealing with international cooperation and issues of practical application of competition protection rules met. Among **the main topics** were issues related to **electronic markets**. Examples of success-

ful advocacy activities and issues related to regulating highly innovative markets were also discussed. Practical issues related to international coordination and application of leniency programmes were discussed.

Cooperation in the field of state aid

Public consultations regarding the availability of short-term export credit insurance for exports to Greece

UOKiK coordinated the collection of contributions from institutions and prepared the position of the Polish authorities regarding the amendment of the Commission communication on short-term export credit insurance. The consultations were cyclical and concerned the exclusion of Greece from the list of countries with commercial risk.

Participation in the Contact Group of International Subsidy Policy

The group consists of representatives of the European Commission and Member States – experts on competition and/or trade. Its work is conducted under the leadership of the High Level Forum of Member States to provide a report for that Forum and the Trade Policy Committee. The group's goal is to exchange views and practices on **international grant policy** in order to support each other in initiatives at multilateral, regional and bilateral level and to share information on grants awarded to third countries. So far, two group meetings took place (January and September 2018), in which Poland was represented by a representative of UOKiK.

State Aid Evaluation Workshop 2018

In November 2018, a representative of UOKiK took part in the "State Aid Evaluation 2018" workshop. It is a cyclical event aimed at exchanging experiences between Member States in the field of evaluation. The workshop discussed the issue of **the importance of evaluation results for the improvement of the state aid system** from the point of view of the European Commission, as well as the experiences from implementing evaluation programmes. Representatives of DG COMP, DG REGIO and ESPC conducted a quality analysis for evaluation

reports. In addition, case studies were presented on regional aid in Portugal and the Flemish region and on state aid for broadband network in Germany and in rural areas.

Transparency Steering Group

The group's work is aimed at **developing European Commission guidelines on how to register data in TAM system**. This is a EC system, which will ultimately serve the Member States to collect in one place the data on high-value state aid granted in the EU. The use of TAM system is not obligatory, but it is particularly recommended by the European Commission. During the group's work in 2018, proposals for changes in the scope of system functionality and enabling its interoperability with SANI2 and SARI were submitted. In addition to the electronic exchange of information, a meeting was held in Brussels in September to summarise the controls carried out in the Member States to date regarding the transparency of state aid. In addition, representatives of Estonia, Denmark, Italy and Hungary talked about the systems for monitoring aid in their countries and about actions taken to comply with the transparency requirement.

Member States' Working Group on Implementation of State Aid Modernisation

The Group is a platform for the exchange of information and experience in implementing state aid law reform. Meetings are held regularly during the year, and in 2018, three meetings were held (in February, April and October). The group deals with the **following topics**:

- implementation of reform results (training programmes, information exchange platforms, expert networks);
- ensuring compliance with EU law (analysis of state aid monitoring systems, examination of the presence of state aid, ex ante and ex post evaluation of aid granted under block exemptions);
- analysis of state aid monitoring systems in individual countries;

- application of state aid regulations in the implementation of European funds (identification of divergences in both sets of rules).

The group's work is summarised and approved during High Level Forum meetings.

High Level Forum

One of the elements of the reform of state aid law was **the closer cooperation between the European Commission and the Member States**. As part of this initiative, meetings with representatives of Member States in senior positions were initiated by the Commission. They are informative and consultative in terms of implementing the reform and its subsequent stages. In June 2018, Poland was represented by two representatives of UOKiK.

Participation of a UOKiK representative in the hearing of the Committee on Budgetary Control of the European Parliament "State aid and structural funds – are they compatible with each other?"

The chairman of the Committee on Budgetary Control of the European Parliament invited to participate in the debate on the application of state aid rules in projects co-financed from European funds. The event was attended by representatives of Poland, Greece and Germany, as well as employees of the European Commission, the European Court of Auditors and the Court of Justice of the EU. A representative of the Office gave a presentation on the problems that Member States face when implementing state aid and funding rules.

Cooperation in product safety and market surveillance

In April 2018, there was a High Level meeting on Double Food Standards called "Time to table the EU double standards on foodstuffs," organised jointly by the National Ombudsman of Bulgaria and the Bulgarian Ministry of Economy. The event aimed to include the issue of double food standards in the EU in the agenda of the Bulgarian Presidency and to continue discussions on how to solve this problem. The topic of double

food standards is one of the issues currently widely discussed in the European Union. Participation in the conference allowed the exchange of information and familiarisation with the positions of other countries noticing this problem.

Bilateral cooperation in the area of competition and consumer protection

On 26 November 2018, a memorandum on cooperation between the Office and the Ministry of Antitrust and Trade Regulations of the Republic of Belarus was signed at UOKiK head office. Contacts were established during the meeting of the Joint Polish-Belarusian Economic Cooperation Committee. The implementation of the memorandum is to contribute to **strengthening the functioning of free market mechanisms in Belarus**. In addition, it enables the exchange of knowledge and experience in the field of competition and consumer protection law.

Visits of foreign delegations to UOKiK

In 2018, UOKiK was visited by numerous foreign delegations whose purpose was primarily to familiarise themselves with the Office's operation, as well as with basic legal acts in the field of competition and consumer protection.

As part of the EU-funded twinning project Further Development of Consumer Protection in Serbia, **a delegation from Serbia** visited. During the meeting, the competition protection system in Poland, the operating principles of the ADR/ODR platform, as well as the perspectives for changes and increasing the effectiveness of solutions adopted in Poland in the field of consumer protection were presented.

In September 2018, **delegations from the Donetsk and Luhansk districts in Ukraine** visited UOKiK. The theme of the meeting was Promoting Transparency and Integrity in Public Procurement: Learning From Polish Experience. The representatives of UOKiK discussed the principles of competition protection, including first of all regarding conducting public procurement proceedings. Much attention was paid to the issue of combating bid rigging, especially in the healthcare sector.

In December 2018, UOKiK hosted **a delegation from China** consisting of representatives of the National Development and Reform Commission from Beijing and the Academy of Reform and Development from Shanghai. The topic of the meeting was to present the key Polish and European competition protection rules. Delegates from China were interested in gathering information for the needs of their analyses and research.

Also in December 2018, UOKiK was visited by **a parliamentary delegation from Kenya** consisting of representatives of the parliament and the national competition authority. The topic of the meeting was the method of implementing competition protection rules in Poland, with particular emphasis on the economic analysis factor. Delegates were interested in actions that were taken in Poland to demonopolise the legal services market.

On 15-16 October 2018, **an evaluation from the European Court of Auditors** was held at UOKiK premises. It concerned the way the European Commission fulfils its obligation to cooperate with Member States. To examine the effectiveness of these activities, EC's mutual contacts with the Polish competition authority were analysed. UOKiK employees presented the principles of cooperation with the European Commission in the proceedings conducted as well as the methodology and tools applied in mutual contacts.

Conclusion

By delivering its statutory competences with regard to competition and consumer protection, the Office of Competition and Consumer Protection keeps developing and improving the tools for better identification and elimination of irregularities from the market.

In 2019, **amendments** are planned to **the act on competition and consumer protection**. It results from the need to align the national law with the EU Regulation on unjustified geographical blocking, which prohibits entrepreneurs from discriminating customers on the basis of nationality, place of residence, or place of business. The new regulations are also to facilitate the Office in enforcing the regulations, conducting proceedings, and imposing penalties thanks to having access to tax secrecy and – to a larger scope than before – banking secrecy.

The coming year will bring further activity of UOKiK in **combating competition restricting practices**. The Office will focus on effective acquisition of evidence confirming entering into prohibited agreements or abusing the dominant position. To do that, searches at premises of entrepreneurs will be used at a wide scale and the Whistleblower programme will be developed. Also, UOKiK expects 2019 to be **another record year in terms of the number of decisions related to concentration control**.

Similarly intensive activities are planned **with regard to cases of unfair use of contractual advantage**. The Office will intervene in the sector of agricultural products and foodstuffs in order to improve the situation of the weaker party to agreements, i.e. farmers. The provisions of the act on contractual advantage amended in 2018 allow for a more frequent and more efficient response in favour of small and medium food producers. Trade Inspection's controls instructed by the President of UOKiK will continue to play a major role in this respect. They allow acquiring valuable evidence for the breaches of the law.

UOKiK's priority will be efficient **elimination of practices which violate the collective consumer interests and use**

abusive contractual clauses. To do that, key elements include on-going market surveillance, analysis of signals from consumers, and close cooperation with institutions which protect the weaker market participants. One of the most important tasks will still be combating **abuse in the market of financial services**, and the new discretions of the President of UOKiK in this respect, granted under the provisions of the act on strengthening the supervision of the financial market, amended at the end of 2018, will be helpful. The ability of imposing financial fines on the management of financial institutions and efficient exchange of information thanks to the fact that the President of the Office has become a member of the Polish Financial Supervision Authority should be reflected in UOKiK's decisions.

In 2019, the activities for the benefit of consumers whose mortgage loan agreements contain prohibited contractual provisions will be continued. In this regard, UOKiK plans further proceedings in relation to financial institutions who act as lenders, issuing significant views in court cases regarding consumer protection, and participation in proceedings before the Court of Justice of the European Union. The centre of the Office's focus will also be the market of investment products and the threats related to investing one's savings in aparthotels and condohotels.

The Office's plans for 2019 are also related to improving the process of controlling the quality of solid fuels, delivered by the Trade Inspection. Also, UOKiK intends to have further, active participation in the conceptual work related to creating a specialised inspection dealing with food security, including also providing it with the Trade Inspection's rights with regard to controlling foodstuffs. Also, an important issue will be UOKiK's involvement in the reform of the national system of market surveillance in relation to the adoption, at the EU level, of the new framework regulation on market surveillance, so as to adapt our system to the latest challenges and increase the level of consumers' safety.

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