Price fixing on coal sales. Decision of President of UOKiK

* **President of UOKiK Tomasz Chróstny has imposed a fine of over PLN 2.5 million on Przedsiębiorstwo Wielobranżowe Atex.**
* **The entrepreneur imposed coal sales prices on its trading partners. As a result, they could not sell coal at lower prices.**
* **Distributors were ostensibly bound to Atex by agency agreements but in reality they were independent entities that should be free to set prices.**

**[Warsaw, 13 March, 2024]** The core business of Przedsiębiorstwo Wielobranżowe Atex is import, distribution and wholesale and retail sale of hard coal, including eco-pea coal, eco-powdered coal and coke, as well as wood pellets. The entity sells products on its own or through a partner network.Their contracts were supposed to correspond to those of the agency as the associates were to sell the coal on behalf of Atex. However, the investigation by President of UOKIK showed that the contractors were in fact independent distributors and there was unauthorized pricing of product sales. Atex's contractors could only sell fuel at prices set by the company. They did not have the right to change top-down imposed rates nor to give discounts or rebates to customers.

- We have reviewed the activities of Atex and its associates for incurring economic and financial risks. The investigation showed that these risks were passed onto contractors. This means that under antitrust law they were not agents of Atex but independent distributors. In such a case, they should set their own prices which cannot be imposed on them or set in agreement with other entities. Our decision also sends a signal to the market that it is not enough to call a contract an agency to be able to violate antitrust laws" - says President of UOKiK, Tomasz Chróstny.

**What an agency contract should look like**

We are facing an agency contract when the order taker (agent) is given the power of attorney to sell goods supplied by and on behalf of the principal. In competition law, it is assumed that an agent is not an independent entrepreneur independently shaping its market behavior but part of the same enterprise as the principal. In this case, it is allowed to use the same selling price since it is done within a single entity.

On the other hand, it is unacceptable for an agency agreement to be a mere sham. This sham is examined by looking at the economic and financial risks that the collaborator bears. If they are mostly passed onto them, they are not an agent, because they cannot be said to be part of the same company as the principal. This was the case with Atex company and its partners in this matter. They incurred costs and economic risks related to, among other things, maintaining coal stocks, insuring them, and transportation costs.

President of UOKiK imposed a fine of almost PLN 2.5 million (PLN 2,448,959.22) on Atex for restrictive practices. The decision is not final and may be appealed to the court.

The maximum fine for participation in an anti-competitive agreement is 10 percent of turnover for the entrepreneur, it is also possible to impose a monetary sanction of up to PLN 2 million for managers who are directly responsible for the prohibited practice.

Severe sanctions can be avoided by taking advantage of the [leniency scheme](https://konkurencja.uokik.gov.pl/program-lagodzenia-kar/).It offers to entrepreneurs involved in an illegal agreement and to managers responsible for collusion an opportunity to reduce a fine or, in some cases, avoid it altogether. It is applicable to those who agree to cooperate with the President of UOKiK as a “crown witness” and provide evidence or information on the illegal agreement. We encourage the parties interested in the leniency scheme to contact the Authority. By calling a dedicated number: (48 direct to Poland) 22 55 60 555, you will be able to talk to UOKiK lawyers, who will answer all of your questions related to leniency applications - including those asked anonymously.

We also remind you that we conduct a programme to obtain information from anonymous whistleblowers. Do you wish to inform UOKiK about competition restricting practices? Visit <https://uokik.whiblo.pl/> or scan the QR code below and use the simple form. The pan-European system we rely on ensures full anonymity, also towards the Office itself.

QR code for the whistleblower platform:

