

POLAND

(2000)

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Executive Summary

1. In 2000 works on two crucial acts were completed. They both are enforceable now.
2. One is act on competition and consumer protection which replaces act on counteracting monopolistic practices and protection of consumer interests. The modifications introduced by the new act are designed to increase the efficiency of the Office for Competition and Consumer Protection (OCCP) actions when dealing with the anticompetitive practices on the Polish market.
3. The second act is act on conditions for admissibility and supervising of state aid for entrepreneurs. Up till now state aids were regulated in many different legal acts. The above mentioned provisions provide uniform rules on admissibility of any aid granted from public funds and the procedure both for monitoring and supervising of state aid.
4. Most of the secondary legislation has already come into effect, the remaining ones will be enacted in the forthcoming weeks.
5. One of the responsibilities of the OCCP is to give its comments to all drafts of legal acts which might effect competition on the market or harm consumer interest. Due to the fact that Poland is harmonising its laws with EC legislation and because competition has a horizontal application the OCCP staff reviewed enormous number of legal proposals prepared by government.
6. Still, the key activity of the OCCP remains counteracting restrictive practices and abuses of dominant position, control of mergers and consumer protection. As to anticompetitive practices, worth noting is the fact that most of the proceedings were initiated on the motion of the interested party. That shows that the enterprises are quite familiar with the antimonopoly provisions. The number of merger notifications was still considerably high but it is expected to drop down due to the changes introduces by the new act.

I. Changes to competition laws and policies, proposed and adopted

1. Summary of new legal provisions of competition law and related legislation and government proposals for new legislation

7. On 15th December 2000 an **act on competition and consumer protection** was enacted. The new act came into force as of 1st April 2001 and replaced currently binding act of 24th February 1990 on counteracting monopolistic practices and protection of consumers interests.
8. When drafting the new act the up-to-date experience of the OCCP was used and a number of new legal instruments were introduced allowing full harmonisation of Polish law with EC law in respect of merger control, antimonopoly agreements and the abuse of the dominant position by the entrepreneurs.
9. In particular, the new act changes the so called rule of reason fully adjusting it to the formula adopted in EC law. It replaces the existing relative prohibition of the abuse of the dominant position by the absolute prohibition, it defines the agreements of minor importance, which by virtue of the act will not be prohibited. Art. 7 contains a legal delegation for adoption of the block exemption regulations.
10. In respect of merger control, the new act rises the notification thresholds from 25 mln to 50 mln Euro, it imposes the obligation to notify the intention of concentration if one of the parties is a natural

person and it specifies the conditions for exemption from the obligation to notify (concentrations of the entrepreneurs whose aggregate market share doesn't pose any threat to the competition).

11. In order to increase the efficiency of the OCCP the new act modifies procedural provisions - in the cases of competition restricting practices an explanatory investigation can be instituted to avoid opening more costly and complex antimonopoly proceeding in cases where it is sufficient to make a decision on the evidence gathered in the shorter proceedings. Additionally, the new provisions are better designed to deal with cases to which parties are entrepreneurs with a strong market position.

12. One of the four secondary regulations to the new act i.e. regulation of the Prime Minister on the administrative fees to be paid when filing the motion to institute the proceedings, came into force on 5th May 2001. Three others:

- regulation of the Council of the Ministers on the calculation of the turnover¹,
- regulation of the Prime Minister on the mode and procedure for organising the contest to select the President of the Office for Competition and Consumer Protection,
- regulation of the Council of the Ministers on the detailed conditions to be fulfilled by the notification of the intention of concentration

will soon be adopted by the Council of Ministers.

13. The remaining regulations issued on the basis of the act on counteracting monopolistic practices and protection of consumers interests will remain in force in the scope in which they are not contradictory to the provisions of the new act, however no longer then till 1st April 2002 (art.114). This provision will apply to two regulations, i.e.:

- regulation of the Council of Ministers of 15th February 2000 on detailed rules and procedures for performing control of observance by entrepreneurs of provisions on counteracting monopolistic practices,
- regulation of the Prime Minister of 20th January 1999 on the territorial and material jurisdiction of the Branch Offices of the Office for Competition and Consumer Protection.

14. The facultative block exemption regulations will be elaborated in 2001 in co-operation with the Community experts.

15. On 1st January 2001 an act of 30th June 2000 on **conditions for admissibility and supervising of state aid for entrepreneurs**² came into force. The Act constitutes the legal base for creation of a system of supervising and monitoring aid for entrepreneurs granted from public funds.

16. The Council of Ministers adopted the following secondary legislation to that act:

1. regulation of 20 February 2001 on granting state aid in shipbuilding sector (came into force on 19 April 2001),
2. regulation of 20 February 2001 on granting state aid in motor vehicle sector (came into force on 19 April 2001),
3. regulation of 20 February 2001 on granting state aid in maritime transport (came into force on 19 April 2001),

¹ This regulation is on agenda of the Council of Ministers session on 23 May 2001.

² More information on provisions of the act can be found in Polish contribution to WP2 round table on "Competition policy, subsidies and state aid" DAFPE/CLP/WP2/WD (2001)2

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4. regulation of 27 February 2001 on granting state aid in synthetic fibres sector (came into force on 19 April 2001),
 5. regulation of 20 February 2001 on granting state aid in coal industry, (came into force on 19 April 2001),
 6. regulation of 20 February 2001 on the method of calculating amounts of aid granted in various forms into its equal grant value (came into force on 19 April 2001),
 7. regulation of 20 February 2001 on the regional aid for entrepreneurs (came into force on 19 April 2001),
 8. regulation of 20 February 2001 on state aid granted to support research and development works (came into force on 24 March 2001),
 9. regulation of 20 February 2001 on cases when co-financing of public entrepreneurs shall be considered to be aid (came into force on 19 April 2001),
 10. regulation of 20 February 2001 determining the way and the scope of announcing the commencement of aid granting schemes elaboration and publication of these schemes (came into force on 24 March 2001),
 11. regulation of 27 February 2001 determining detailed scope of information to be presented to the monitoring authority in order to issue the opinion concerning the aid granted (came into force on 19 April 2001),
 12. regulation of 16 January 2001 determining the scope of obligation to supply information for the reports on aid granted and information on payments and liabilities due from entrepreneurs to the State Treasury (came into force on 19 April 2001),
 13. regulation of 15 May 2001 on the granting state aid in steel sector.
17. The following regulations will be adopted by the Council of Ministers in the forthcoming weeks:
1. regulation determining the entrepreneurs obliged to provide the monitoring authority with the reports on the received aid and determining the scope of reporting obligations,
 2. regulation determining exemptions from the obligation of commencing the aid granting schemes.
18. A number of amendments were added to the **act on combating unfair competition**. They came into effect on 19th July 2000. One of the most significant changes relates to the introduction of ban on so-called comparative advertising, as long as it breaches decorum.
19. The new **act on Trade Inspection** was adopted by the Parliament on 15th December 2000 and it came into force on 1st April 2001.

2. *Other relevant measures, including new guidelines*

20. The OCCP gives answers to the queries of the enterprises. Most of the queries concerned provisions on the obligation to notify the intention of merger, and in particular whether enterprises forming one capital group should notify the OCCP when intending to merge within that group. The act on counteracting monopolistic practices did not regulate this issue expressly. However, the Antimonopoly Court ruled that for the purpose of merger control the capital group is treated as 'one economic entity' and therefore no notification is required. In the new act on competition and consumer protection this approach is confirmed in article 13.6.

21. Furthermore, the question arose as to the obligation of notification of transnational mergers. It is decided that, on the basis of article 1 of the act on counteracting monopolistic practices which provides that the act will apply to all anticompetitive practices "which cause or may cause effects within the territory of

the Republic of Poland", the parties to transnational merger are obliged to notify their intention to merge to OCCP when:

1. any of the enterprises has subsidiaries in Poland or
2. they have a distribution networks in Poland or
3. they conduct permanent sales on the territory of Poland.

II. Enforcement of competition laws and policies

1. Action against anticompetitive practices, including agreements and abuses of dominant position

a) Summary of activities of:

- Office for Competition and Consumer Protection

22. In 2000 there were 370 formal proceedings carried by the OCCP in the cases concerning antimonopoly practices. 35 % of these proceedings were initiated in the preceding years. In nearly 60 % of the total number of the proceedings final decisions were reached. As a result of the investigation, in 47 % of all cases the existence of the antimonopoly practises was found. Half of these cases concerned municipal services, 10% - industry and the remaining proceedings were carried in cases concerning trade, agriculture, liquid fuels and others. In 109 cases (30 %) the request to ascertain the existence of such practise was denied due to the results of preliminary investigation which did not give grounds to institute the formal proceedings. 18 % of the proceedings were discontinued and 5 cases were closed by settlement. In remaining 4% of the proceedings other resolutions were taken.

23. The vast majority of the proceedings (i.e. 329) were initiated upon the motion brought in by the interested parties.

24. In 57 proceedings against antimonopoly practices the OCCP imposed fines which amounted to 8.848.233 PLN. In 23 cases the business entities were fined more than 50.000 PLN each (in total 8.455.366 PLN).

- Antimonopoly Court

25. The Antimonopoly Court examined 81 appeals from the decisions of the OCCP's President. The Court gave 57 judgements:

- in 32, it sustained decisions of the Office,
- revoked 8 OCCP's decisions in full,
- revoked 7 OCCP's decisions in part,
- changed 5 OCCP's decisions in full,
- changed 4 OCCP's decisions in part,
- suspended 1 proceedings.

26. The Court issued also 24 decisions, in 20 of which it rejected the appeal for procedural reasons (i.e. administrative fee was not paid or the appeal was brought in after the time proscribed).

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27. In 3 cases the Antimonopoly Court imposed fines for non-compliance with the judgements or decisions of the Court which totalled 19.517 PLN.

b) Description of significant cases

Municipal services

28. Anticompetitive practices consisted in:

- refusal to make available waste dumps to the companies engaged in waste disposal,
- limiting funeral parlours in providing their services by the entities administering the cemeteries.

Energy sector

29. The majority of the anticompetitive practices of the power utilities included abuses of dominant position on the local market of energy supply. The power utilities were imposing onerous contract conditions giving them unjustified profits by way of signing separate contracts with every customer regardless of the fact that in most cases few customers were using one and the same connection. Thus, the power utility was charging several standing charges for one connection. Another example is charging the fee for energy supply on the basis of energy measurement taken outside the building and thus, charging customers not for the actual units used.

Transport

30. Anticompetitive practice consisted in refusal by the local authority - the owner of local bus stops, to use these bus stops by the intending carriers and thus, preventing them from obtaining permits to carry economic activity of passenger road transport. The aim of this refusal was to maintain the monopolistic position of the passenger transport company, in which this local authority held 100% of shares.

Telecommunications

31. The OCCP carried several proceeding relating to imposition by TP S.A. (telecom) onerous contractual terms and abuse of its dominant position on the telecommunication market.

2. Mergers and acquisitions

a) Statistics on number, size and type of mergers notified and /or controlled under competition laws

32. In 2000 the OCCP examined 1107 cases referring to mergers. 17 % of these cases concerned either providing explanations to enterprises which were uncertain whether they are obliged to notify merger or returning the motions filed by the enterprises not obliged to notify. In the remaining 83 % of cases the OCCP issued its approvals to the intended mergers (there were no decisions forbidding the enterprises to go ahead with mergers).

33. In 2000 OCCP imposed 52 fines on business entities which fail to notify the intention of merger within the time provided by the provision of antimonopoly law. The fines imposed amounted to 373.436 PLN.

Specification	No. of cases in 2000
Cases reported to OCCP	1291
Cases reviewed in 2000	1107
Favourable opinions issued, concerning:	911
- divisions	0
- mergers:	911
1) mergers of entrepreneurs,	36
2) acquisition or take-over of an organised part of the assets of another entrepreneur,	21
3) take-over or acquisition of stocks or shares of another entrepreneur,	688
4) acquisition of stocks/shares in a newly established business entity,	109
5) acquisition of stocks/shares by financial institutions	5
6) mergers of banks,	11
7) assuming managerial functions in competing entities,	25
8) take-over of control over business entity by other means	16
Negative opinions issued	0
Other resolutions	196
Number of notifications not reviewed in 2000	155

b) *Summary of significant cases*

34. Most mergers arose in the following sectors: food industry, energy, construction materials, road building machinery, IT, local publishers, motor sector, chemical industry. In 2000 the OCCP reviewed notifications of intended mergers in several new areas like: financial and personal consulting, internet providers, outside advertising (where tendency of buying shares in Polish enterprises by foreign firms can be observed). The restructuring and privatising of sugar industry was also controlled by the OCCP as to compliance of this process with the merger control provisions.

III. The role of competition authorities in the formulation and implementation of other policies

35. The OCCP is giving its opinions to the governmental and parliamentary documents. The total number of documents reviewed by OCCP in 2000 is 4611. When making its comments the OCCP put emphases on consistency of the documents with competition law, including law on state aids, as well as on issues relating to protection of consumers.

36. The OCCP provided its comment also to a large number of drafts of legal act, and in particular to draft acts on:

- collective provision of water supply and sewage disposal,
- cosmetics,
- pharmacy law,
- amendments to the act on geologic and mining law,
- genetically modified organisms,
- electronic specimen,
- amendments to the act on special economic zones.

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37. As a way of illustration, in reference to **draft act on electronic specimen** the OCCP pointed out that the provisions of the draft act relating to the concentrations of the entities providing certification services did not regulate the issue in the required detail. In addition, when referring the cases not regulated in the draft act to the act on competition and consumer protection, only the merger control provisions were designated. Thus, the provisions on abuse of dominant position and restricted practices would be excluded from the application to the anticompetitive practices of the entities providing certification services.

38. Another example of the comment given by the OCCP is its objection to the provision of the **draft act on pharmacy law** whereby obtaining permit to run the pharmacy was conditional on the fact that there can be only one pharmacy for 5 000 inhabitants. Enforcement of this provision would lead to partitioning of medical products market and would limit access to the market to new companies.

39. In the 2000 the Office opined also a number of important governmental programmes:

- “ Program for the public statistic development to the year 2002” ,
- “Updated steel sector restructuring programme” ,
- “Strategy for the light industry in years 2000-2005” ,
- final report of the accomplishment in years 1997-1999 of the Governmental Strategic Programme “ Nuclear residue and burnt nuclear fuel management in Poland” ,
- " Restructuring programme for coal industry and sulphur processing in Poland" ,
- "Development plan for satisfying present and future electric energy demand ,
- "Environment and Health" .

40. The OCCP took an active role in several governmental working parties discussing the following issues:

- privatisation of energy sector and opening electric energy market,
- scope of demonopolisation and deregulation of Polish economy and extending this policy to other sectors, e.g. telecommunications, energy sector, road, rail and air transport, postal services,
- balancing interests of large trading companies and small and medium suppliers,
- standardisation and certification,
- restructuring of gas sector.
- free movement of goods

41. Staff members of the OCCP participated in all meetings of Parliamentary Commission on Competition and Consumer Protection, providing information on the following topics:

- assessing basis on which heating tariffs are set up,
- telecommunication services market,
- monopolistic practices in price setting.

42. The officials of the OCCP were also present at the meetings of other parliamentary commissions where various policies and strategies in which competition is of prime concern were discussed and formulated; and in particular Parliamentary Commission on Economy and Parliamentary Commission on Posts and Telecommunications.

43. The OCCP was also giving its opinions to Ministry of Economy concerning motions of Polish enterprises which related to excessive importation of various goods to the Polish customs territory and to importation of goods at dumping prices.

IV. Resources of competition authorities

1. Resources overall (1999 & 2000):

a) Annual budget (PLN & US\$):

44. The Office for Competition and Consumer Protection had the following budgets in 1999 and 2000 *:

	1999		2000	
	PLN	USD	PLN	USD
Part 37				
Office for Competition and Consumer Protection	14.709	3.510	17.810	4.301
Section 61				
Domestic trade	5.212	1.243	6.153	1.486
Chapter 6182				
Chief Inspectorate of Trade Inspection	2.947	703	3.951	954
Chapter 6595				
Allocation for NGO's	2.265	540	2.232	539
Section 91				
State administration	9.497	2.266	11.657	2.815

* Figures in 000's

US\$ rate published by National Bank of Poland on 29 Dec 2000: 1 US\$ = 4.14 PLN

b) Number of OCCP employees

	31 Dec. 1999	31 Dec. 2000
Head Office	121	144
Branch Offices	69	75
Total	190	219

45. In the end of 2000, the Office employed 219 members of staff, including 184 persons with university background:

- 89 lawyers,
- 51 economists,
- 79 other professionals.

V. Summaries of or references to new reports and studies on competition policy issues

46. In 1998 the Council of Ministers approved programme on "**Counteracting Monopolies and Strengthening Competition**". According to that programme the OCCP was to monitor the state of competition in the selected industries and to produce reports on implementation of the programme. On the basis of information obtained from Ministries in charge of specific tasks defined in the programme, in 2000 the OCCP prepared 3 such reports which were then presented to the Economic Committee of the Council of Ministers and to the Council of Ministers. The reports outlined progress in the demonopolisation of

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certain industries and pointed out delays and possible threats to realisation of programme's objectives. Analysis of the reports showed that:

- in energy sector the process of privatisation was accelerated and the opening of the market to the competitors was continued,
- in gas sector programme of restructuring of Polish Oil & Gas Company was updated,
- in telecommunications sector the process of issuing licences to new long-distance operators continued giving ground for undistorted competition in that area.

47. The Permanent Energy Industry Task Force, which was established in 1999 and has carried its works in 2000, drew up "**Draft Schedule for privatisation electric energy sector and opening electric energy market**". The draft schedule was approved by the Council of Ministers on 16th May 2000.

48. On 18th January 2001 "**Report of the Deregulation and Demonopolisation Task Force**" was approved by the Economic Committee of the Council of Ministers. The reports consist in the assessment of the demonopolisation and deregulation activities undertaken so far and suggestions to broaden and to speed up these processes in the telecommunications, fuel sector, energy sector, road and rail transport, postal services and labour market.

49. The OCCP participated in the works concerning concentrations and co-operation of national producers and suppliers. As a result of these works "**Programme for internal trade development to 2003**" was prepared. The programme details legislative works to be undertaken in order to eliminate anticompetitive behaviour on the market. In particular, introduction of the provision forbidding selling products at the same prices as paid to the producers was suggested. Furthermore, guidelines of regulation leading to shortening of the payment deadlines were drafted.

50. The OCCP carried a number of research projects regarding **level of concentration** on the following national markets:

- prescribed medicines,
- distribution of phonograms,
- optical glasses,
- non-freezing liquid to radiators,
- vegetable preserves,
- stationary products.

51. The research projects also concerned **price levels in conditions of restricted competition**, for instance:

- price changes introduced by Telekomunikacja Polska S.A. (telecom),
- setting prices for internet services,
- setting prices for local bus transport,
- setting heating tariffs,
- setting prices for water supply and sewage disposal.

52. Results of the above mentioned research projects were taken into account both in administrative proceedings and in legislative works.

53. The OCCP prepared "Report on the state aid in Poland granted to entrepreneurs in 1999" and "Inventory of state aid in Poland granted in 1998 and 1999". For the first time, the Report contains data concerning public aid assigned by communes.