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Office of Competition and Consumer Protection



REPORT ON ACTIVITIES UOKIK 2016

Warsaw 2017



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UOKiK in numbers

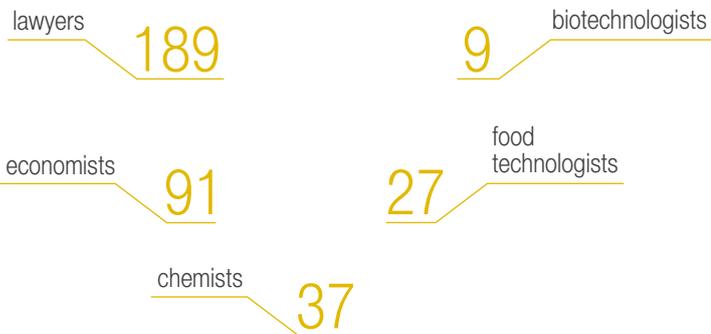
Budget

PLN **66,8** M

Number of employees¹

498 ¹ As at 31.12.2016.

including



Fines imposed on businesses²

PLN **106,8** M

² This figure includes fines for practices infringing collective consumer interests, competition-restricting practices, failure to file notification of intent to concentrate or effecting a concentration without the Authority's clearance, failure to comply or default in complying with a decision, failure to provide information to the Authority, failure to cooperate during an inspection or search with respect to general product safety.

The highest fine for competition-restricting practices³

PLN **1,6** M

(SCA Hygiene Products sp. z o.o.)

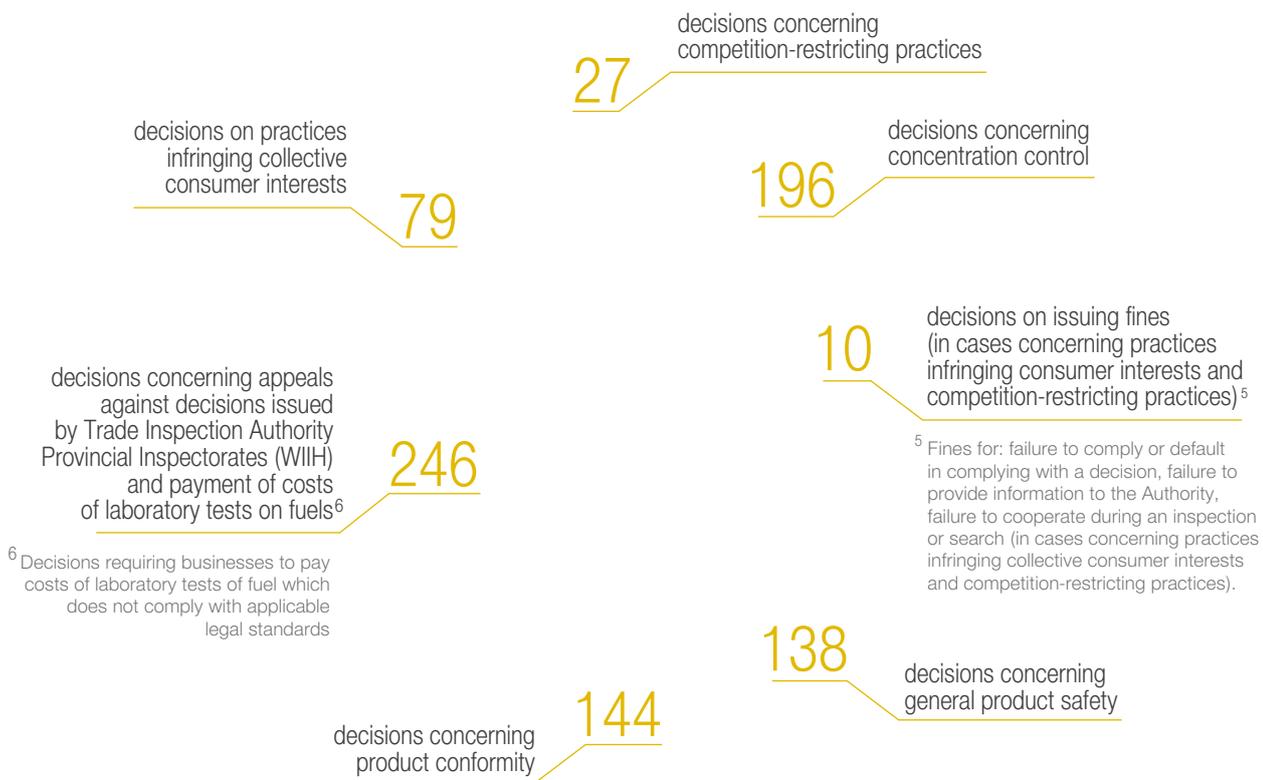
³ Decision [DOK-2/2016](#). The company did not appeal to SOKiK.

UOKiK in numbers

Number of decisions⁴

840

⁴ Including decisions to discontinue the proceedings.



⁶ Decisions requiring businesses to pay costs of laboratory tests of fuel which does not comply with applicable legal standards

⁵ Fines for: failure to comply or default in complying with a decision, failure to provide information to the Authority, failure to cooperate during an inspection or search (in cases concerning practices infringing collective consumer interests and competition-restricting practices).

The highest fine for practices infringing collective consumer interests⁷

PLN 28,6 M

(Orange Polska SA w Warszawie)

⁷ Decision [DDK-26/2016](#). The company appealed to SOKiK.

UOKiK – key information

Our Mission

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

President of UOKiK

President of the Office of Competition and Consumer Protection is a central governmental authority. The powers of UOKiK are laid down in the Act of 16 February 2007 on Competition and Consumer Protection⁸. The Authority's activities are financed from the state budget.

Management

President of UOKiK

Marek Niechciał

(since 12 May 2016)

Vice-President of UOKiK

(Competition Protection Division)

Bernadeta Kasztelan-Świetlik

(from 11 June 2014 to 29 June 2017)

Vice-President of UOKiK

(Consumer Protection Division)

Dorota Karczewska

(appointed on 11 June 2014)

Director-General

Maciej Jabłoński

(appointed on 30 August 2016)

Our Tasks

- ▶ To prevent and eliminate distortions in market competition and its development.
- ▶ To perform concentration control.
- ▶ To protect collective consumer interests.
- ▶ To ensure product safety and monitor the quality of non-food and food products on sale.
- ▶ To monitor state aid.
- ▶ To take part in the legislative process with a view to creating legal framework that supports development of competition and ensures effective protection of consumer interests.

⁸ Consolidated text, Journal of Laws of 2017, item 229, as amended.

Foreword

The year 2016 was a time of intense activity in the field of consumer protection in financial and telecommunications markets. In 2016, the Authority entered into agreements with insurance companies which offered unit-linked insurance products. These concerned a reduction in the liquidation fees for consumers not covered by the insurers' obligations resulting from the Authority's decisions issued in the years 2015-2016. A number of procedures were also carried out in the telecommunications market. The dynamic development of this sector is marked by infringements both in performance of contracts and acquisition of new customers. For this reason, the telecommunications market was one of the top issues on the agenda during a debate organised by the Authority for the World Consumer Rights Day 2016.

In taking care of consumer safety, in addition to administrative proceedings, the Authority is also involved in creating effective legal regulations. With the amendment to the Act on Competition and Consumer Protection effective from April 2016 the Authority gained new powers and tools. Among these, the Authority took over the powers vesting so far in the District Court in Warsaw – Court of Competition and Consumer Protection (SOKiK) for judging on prohibited clauses in standard contracts. Another new tool is the power to issue reasoned opinions on competition and consumer protection issues where this is in the public interest. In this regard, the Authority most often issued opinions concerning disputes over clauses contained in mortgage contracts and unit-linked life insurance products. The year 2016 also witnessed the completion of legislative work on the system of alternative resolution of consumer disputes. The solutions put in place will make it easier for consumers to reach an agreement with businesses where their complaints have not been accepted. The area of product safety also saw legislative changes. The entry into force of the Act on Conformity Assessment and Market Surveillance Systems will ensure the consistency of national legislation with the European legal system.

Effective consumer protection is not possible without effective competition, which translates into fair business-to-consumer relationships. The effects of distortions in competition are particularly painful in local markets, which operate under conditions arising from natural monopolies due to access to network infrastructure. In this regard, the Authority performed comprehensive activities in the water supply and sewerage services market. In addition to ongoing procedures, based

on many years of experience, the Authority proposed a draft regulation aimed at eliminating issues in the collective water supply and sewerage services market. Moreover, the Authority undertook educational efforts targeted at market actors. As the Authority's experience demonstrates, part of the infringements result from ignorance of competition law, so a special publication was prepared to clarify the most important aspects found in the Authority's decisions issued in recent years. The publication was recognised outside of Poland and was awarded a mention in a competition organised by the International Competition Network (ICN) and the World Bank. To increase the detection of prohibited agreements is still a priority for competition protection. This issue was discussed, among others, at international workshops organised by the Authority in 2016. As the experience of competent authorities in other countries demonstrates, it is not only Poland that faces problems in this respect. Businesses develop never and better ways of price fixing or information sharing. The Authority seeks further solutions for detecting collusions.

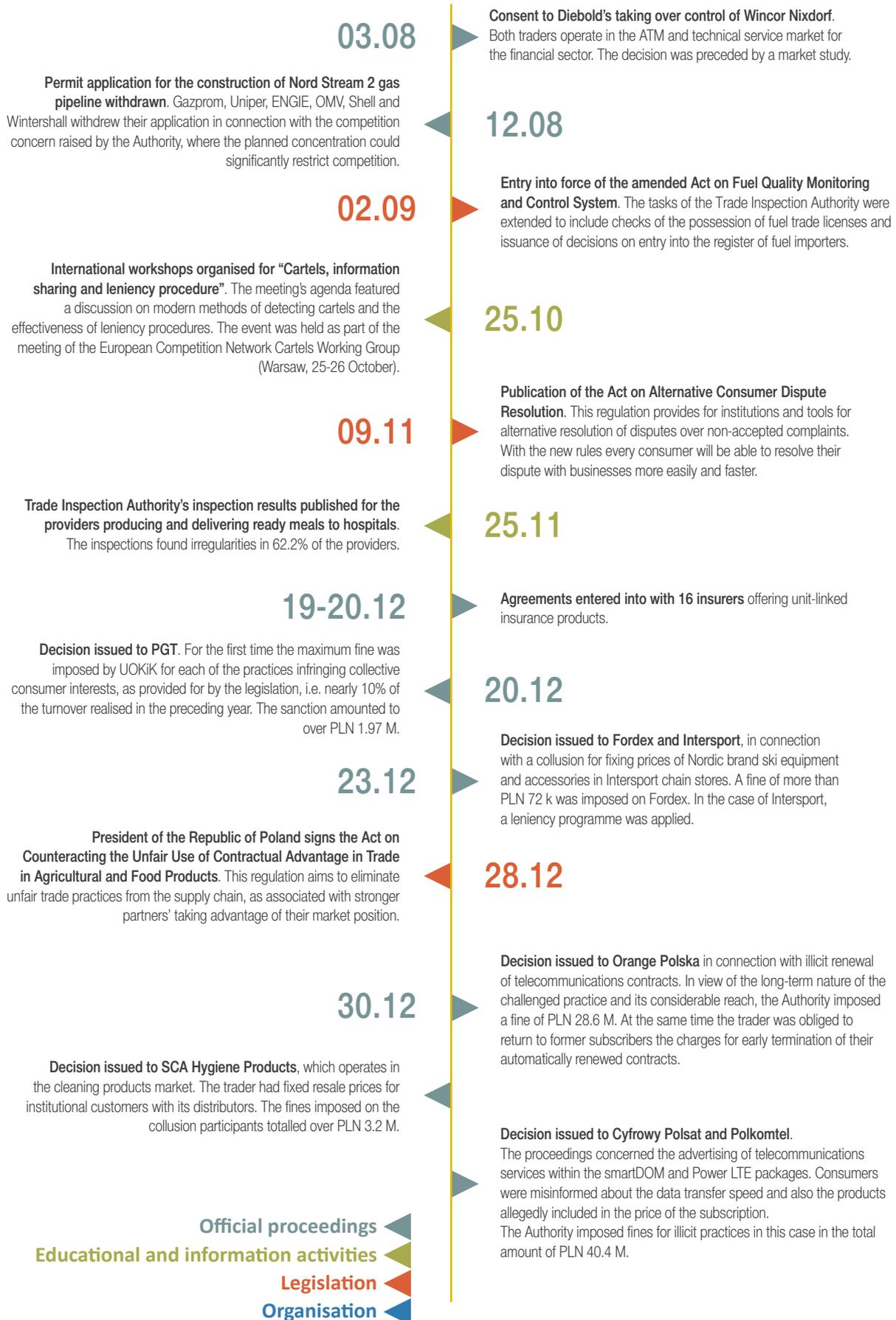
In 2016, UOKiK was also involved in the preparation of the Act on Counteracting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products. New regulations mean additional powers for the Authority to deal with cases in this regard. The Act, as adopted in 2016, supports the development of competition by protecting contractual balance in the relationships between suppliers and purchasers of agricultural and food products. The Authority's activities for increasing the transparency of state aid should also be noted. In 2016, the work was completed on the Electronic State Aid Information System. It is an important source of information on aid granted to enterprises.

As in previous years, the Authority cooperated with public institutions and non-governmental organisations within the network for consumer and competition protection. The Authority analysed and made use of signals from the Public Prosecutor's Office, the Polish Financial Supervision Authority, the Financial Ombudsman, consumer ombudsmen, among others. In pursuing the measures for effective competition and consumer protection, the Authority was also active in the international arena, primarily within the European Union structures.

Calendar of events 2016

- ▶ Official proceedings
- ▶ Educational and information activities
- ▶ Legislation
- ▶ Organisation







I. CONSUMER PROTECTION

The Authority's activities for consumer protection include mainly the following:

- ▶ proceedings in cases of practices infringing collective consumer interests and proceedings for recognition of prohibited clauses in standard contracts,
- ▶ monitoring the control system for product conformity, supervision of product safety and management of the fuel quality monitoring and control system, in collaboration with the Trade Inspection Authority, which conducts the inspections.

Legislation-related activities of the Authority also serve the purposes of consumer protection, along with its educational and information campaigns, social surveys and international cooperation. These aspects are presented in separate chapters.

1. Practices infringing collective consumer interests and prohibited clauses in standard contracts

1.1. Practices infringing collective consumer interests

A practice infringing collective consumer interests is an illicit activity on the part of a trader, which potentially affects unlimited number of people. Such practices may in particular involve unfair market practices, failure to provide consumers with real and accurate information, sales of financial products misaligned to the customer's capacities or needs (the misselling).

The Authority's **proceedings** in cases of practices infringing collective consumer interests may result in an order on a trader to discontinue the illicit activity and in a fine in the amount of up to 10% of the total turnover realised in the year preceding the year in which the fine is imposed. It is also possible for a trader to make a voluntary commitment to change the challenged practice. The Authority's consent to this solution depends on its reasonableness, including the actual elimination of harmful practices from the market or their effects on consumers as a result of the commitment.

The Authority also has the option to call on a trader to discontinue the practice without the need to initiate proceedings proper. The solutions of this type, referred to as **soft calls**, are applied in particular in the case of less harmful practices, where the application enables a faster elimination from the market than formalised proceedings.

Infringements are eliminated as a result of the Authority's monitoring products and services markets and analysis of signals coming from the market, including consumer complaints, where consumers can file a written notice of suspicion of practices infringing collective consumer interests.

Table 1. Number of proceedings in cases of practices infringing collective consumer interests in 2014-2016

Year	2014	2015	2016
Proceedings in cases of practices infringing collective consumer interests, including:	401	232	175
– initiated	209	106	98
Proceedings concerning a fine to be imposed on a trader¹⁰, including:	26	21	25
– initiated	22	13	19
Investigations, including:	872	754	445
– initiated	543	473	212

Table 2. Number of decisions issued in 2014-2016

Type of decision	Number of decisions issued in:		
	2014	2015	2016
Decisions recognising a practice as infringing collective consumer interests and ordering its discontinuation	53	24	15
Decisions recognising a practice as infringing collective consumer interests and confirming its discontinuation	82	40	28
Commitment decisions ¹¹	142	80	29
Total	277	144	72
Decisions imposing a fine on a trader ¹²	17	8	8
Decisions discontinuing the proceedings on infringement of collective consumer interests, including:	8	1	7
– due to non-finding of a practice infringing collective consumer interests	1	0	1
– for other reasons	7	1	6
Proceedings ended with a resolution or otherwise	2	2	3¹³

In 2016, the Authority initiated⁹ **98** proceedings on practices infringing collective consumer interests and **212** investigations in this regard. In 2016, the fines for the use of practices infringing collective consumer interests totalled **PLN 102.4 M**.

¹⁰ The statistics include proceedings concerning a fine to be imposed on a trader for failure to comply or default in complying with a decision, for failure to provide the requested information to the Authority or for provision of false or misleading information, for failure to cooperate in the course of an inspection.

¹¹ The number also covers decisions, which provided for another resolution besides an imposed obligation (e.g. confirmation of discontinuation).

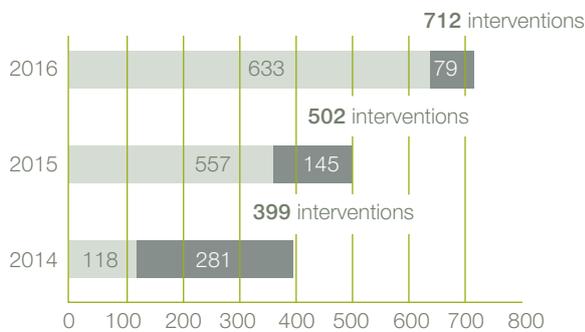
¹² The statistics include decisions concerning a fine to be imposed on a trader for failure to comply or default in complying with a decision, for failure to provide the requested information to the Authority or for provision of false or misleading information, for failure to cooperate in the course of an inspection.

¹³ Including proceedings ended with an internal-use memo, among others due to the suspension of business activity by a trader with no possibility to ascertain the new seat of the company.

⁹ Any proceedings on practices infringing collective consumer interests are initiated only ex officio.

The decrease in the number of proceedings and decisions (Table 1 and 2) is associated with the growing share of soft calls in consumer protection cases (Chart 1). In 2016, **633** out of **812** such interventions were completed. In 77% of cases traders fully complied with the Authority's call¹⁴.

Chart 1. Number of completed interventions of the Authority in the market in 2014-2016 (proceedings and soft calls for infringement of collective consumer interests)



Before issuing a decision confirming the practice or imposing a fine, the Authority presents detailed justification of charges to the trader (SUZ). This allows the party to respond to these before the end of the proceedings. In 2016, the Authority issued **36** justifications in cases related to consumer protection.

An **administrative hearing** before President of UOKiK may also be held during the proceedings, to hear any witnesses, among others. The number of hearings in consumer cases in 2016 amounted to **4**. When collecting evidence in a case, the Authority may also **carry out an inspection** at a trader. In 2016, **7** traders were inspected under 4 proceedings.

On 17 April 2016, the amended Act on Competition and Consumer Protection entered into force. It provided for:

- a revised model of control over standard contract clauses – it is the Authority (and not the Court of Competition and Consumer Protection) that by virtue of an administrative decision recognises a prohibited clause in a standard contract and forbids its further use;
- a ban on misselling in financial services;
- a possibility to issue interim decisions in the course of proceedings in consumer matters;
- the mystery shopping method, which allows the Authority's employees to gather evidence for the cases;
- a possibility for the Authority to issue a reasoned opinion in a case;
- a possibility to broadcast announcements and warnings on public radio and television free of charge;
- an extended limitation period for practices infringing collective consumer interests.

1.2. Prohibited standard contract clauses

On 17 April 2016, the Authority gained the power to **conduct proceedings for the recognition of prohibited clauses in standard contracts**. The Authority's decisions recognising clauses as prohibited have an effect only on the trader who applies them. In 2016, **34** investigations were initiated in this regard, 10 of which were completed. Moreover, **10** proceedings proper were conducted, which are continued in the following year.

¹⁴ The other cases include: partial compliance with the call, failure to comply with the call, non-finding of an infringement.

Apart from the proceedings, the Authority also used **soft calls** for the clauses challenged. In 2016, **154** calls were made, **87** of which were completed.

As in the previous years, in 2016, the Authority kept a [register of abusive clauses](#). It lists contractual clauses, which have been recognised as prohibited by the final judgement of the Court of Competition and Consumer Protection (SOKiK). Register entries cover only those cases where action was brought before 17 April 2016, i.e. before the entry into force of the amended Act on Competition and Consumer Protection. In 2016, **520** clauses were entered in the register, including **34** under action brought by the Authority.

1.3. Examples of activities concerning infringements of collective consumer interests

In 2016, the priority areas of the Authority's activities included financial, telecommunications, energy and e-commerce services.

1.3.1. Financial market

The financial sector offers a variety of products, some of which are characterised by high levels of complexity. Consequently, average consumers are unaware of the potential risks, which broadens the room for offering products that are not adapted to the capacities or needs of the customer (the misselling).

Insurance sector – unit-linked insurance products

Some of the key proceedings conducted by the Authority in recent years concerned unit-linked insurance policies. In 2015, 16¹⁵ out of 17 proceedings against insurance companies were completed in this regard. The Authority challenged contractual clauses on the amount of liquidation

fees that customers had to incur at withdrawal from the policy. In the Authority's opinion, it was a way to pass to consumers the costs that should be accounted as part of the risk of insurers' business activity. In 2016, the last trader covered by the proceedings, i.e. **Skandia Życie**¹⁶, committed to reduce the liquidation fees in unit-linked contracts.

As a result of the completed proceedings against insurers, liquidation fees were eliminated from new standard contracts and consumers gained a real benefit (the **consumer benefit**) in the form of a significant reduction of liquidation fees in existing contracts.

The Authority's decisions did not cover all consumers due to statute of limitations. In view of this, the Authority in cooperation with the industry prepared support for this particular group of customers. On 19-20 December 2016, the Authority concluded [agreements with 16 insurers](#). The arrangements made provided for a reduction of liquidation fees for consumers not covered by the Authority's decisions. The agreements specifically took into account the interests of the elderly, since the sale of long-term policies to this group was an example of misselling. This was the case for those who had entered into contracts after 1 January 2008 and were 61 years of age at that time, and terminated their contracts after 65 years of age. Under the agreements, they were entitled to reimbursement of the difference between the liquidation fee charged on the previous conditions and that resulting from the current agreements. Reimbursements could be claimed within three months from 1 January 2017, i.e. the entry into force of the agreements.

The agreements on the unit-linked insurance policies give an example of a compromise without the need for legislative action. The idea of entering into agreements in this respect originated from the Polish Insurance Association. The work was carried out with the support of the Ministry of Development and Finance and the Polish Financial Supervision Authority.

All insurance companies committed to informing customers of the terms of the agreement. In addition, aggregate information is available from the [Polish Insurance Association](#), which also concluded an agreement with the

¹⁵ Detailed information: [Report on activities 2015](#), p. 18.
The completed proceedings concerned the following insurers: Allianz: decision [RKT-10/2015](#), Aviva: decision [RBG-11/2015](#), Nationale Nederlanden: decision [RKR-10/2015](#), MetLife: decision [RŁO-8/2015](#), PKO Życie (formerly Nordea Życie): decision [RLU-4/2015](#), PZU Życie: decision [RPZ-11/2015](#), Axa: decision [RWR-18/2015](#), Europa: decision [RKT-11/2015](#), Pramerica Życie: decision [RPZ-12/2015](#), Sopotckie TUnŻ Ergo Hestia: decision [RGD-6/2015](#), UNIQA TUnŻ: decision [RGD-7/2015](#), TUnŻ WARTA: decision [RWR-22/2015](#), Aegon: decision [RBG-14/2015](#), Compensa: decision [RBG-15/2015](#), Generali: decision [RŁO-12/2015](#), Open Life: decision [RKT-20/2015](#).

¹⁶ Decision [RKT-01/2016](#).

Authority concerning information activities in this regard. Neither the agreements nor the completed proceedings on unit-linked insurance products preclude civil legal action on the part of consumers to seek redress.

Banking sector – mortgage loans indexed to/denominated in Swiss francs

Measures aimed at protecting consumers with mortgage loans form an important area of the Authority's activity in the financial market. These often complex products are associated with long-term contracts for high amounts of loan. Some of them were denominated in or indexed to foreign currencies.

The increase in the Swiss franc (CHF) rate in early 2015 meant a heavy burden on those with loans indexed to/denominated in this currency. The Authority's activities focused on a problematic issue of interest rate calculation contrary to the contract.

In 2015, the Authority challenged the practice of eight banks offering mortgage loans in CHF. The proceedings concerned the failure to take into account a negative LIBOR base rate in setting interest rates, and thus the failure to perform the provisions to which the banks committed in contracts concluded with customers. In 2015, decisions were issued to ING Bank Śląski¹⁷ and mBank¹⁸. In 2016, the other proceedings were completed. As a result, Getin Noble Bank¹⁹, Credit Agricole Bank Polska²⁰, Bank BPH²¹ and Pekao SA²² made a voluntary commitment to discontinue the challenged practices. Under final decisions, companies should compensate their customers for the effects of their practices, by reimbursing amounts due for periods, during which negative LIBOR rates were not applied. The banks committed to informing customers of these measures.

In the case of Raiffeisen Bank, the Authority challenged the failure to take into account the negative LIBOR rate, and then after the bank abandoned this practice, the failure to calculate negative interest rates on loans in Swiss francs. A fine of more than PLN 3.5 M was imposed on the bank²³. The bank was also ordered to recalculate interest rates and to compensate consumers for all periods when there was a negative interest rate. The trader appealed against

the decision. In the case of PNB Paribas Bank Polski²⁴ the proceeding was discontinued as groundless.

In 2016, the Authority assisted consumers in court actions in which those with mortgage loans indexed to/denominated in CHF sought redress before common courts. In using the tool of **a reasoned opinion in a case**, the Authority issued its positions on the abusive nature of some of the contractual clauses, including those particularly important for the performance of the contract, e.g. the methodology of setting interest rates and indexing the loan amount. In its issued opinions, the Authority also presented the potential consequences of the use of prohibited contractual clauses.

An example of this type of activity was the **first reasoned opinion in a case**²⁵ issued by the Authority at the request of the Municipal Consumer Ombudsman in Warsaw. It concerned the dispute of 1247 consumers having mortgage loans in Swiss francs with mBank, dating back to 2014. The collective action was brought for damages in connection with the bank's use of prohibited clauses, which only too broadly and inaccurately determined the reasons for a change in interest rates. As a result, the borrower was unable to verify the grounds of the change in interest rates. In its position presented to the Court of Appeal in Łódź, the Authority shared the opinion of borrowers by considering that the clause was illicit in its entirety. The bank had not only granted itself freedom to decide whether or not interest rates should be changed but also failed to determine precisely the parameters by which the interest rate was to be adjusted. As an abusive clause, it was therefore not binding on consumers. In addition, as it specifies the conditions for changing interest rates, it is an essential components of the loan contract, so its invalidity may invalidate the entire contract.

In June 2016, the Authority also initiated a preliminary investigation concerning **clauses used in standard contracts** for credits and mortgage loans denominated in foreign currencies, including in CHF. The investigation focuses on the methodology of determining the exchange rates applicable in banks. It covered 10 banks: Bank Millennium, Bank Polska Kasa Opieki, Bank Zachodni WBK, Bank BGŻ BNP Paribas, Bank BPH, Deutsche Bank Polska, Getin Noble Bank, mBank, Powszechna Kasa Oszczędności Bank Polski, Raiffeisen Bank. The Authority's activities aim

¹⁷ Decision [DDK-21/2015](#).

¹⁸ Decision [DDK-20/2015](#).

¹⁹ Decision [DDK-11/2016](#).

²⁰ Decision [RBG-2/2016](#).

²¹ Decision [DDK-14/2016](#).

²² Decision [DDK-12/2016](#).

²³ Decision [DDK-24/2016](#).

²⁴ Decision [DDK-13/2016](#). It was found during the proceedings that prior to its initiation Paribas and BGŻ had merged (30 April 2015), at which date Paribas lost its legal personality. Therefore, the proceeding was initiated (5 May 2015) against a non-existent entity, and therefore was groundless from the beginning.

²⁵ [The reasoned opinion](#).

to verify whether there could be infringements justifying the initiation of proceedings for the recognition of prohibited clauses in standard contracts.

Consumer loans

The Authority constantly monitors the consumer credit market, as traders do not always respect customer rights. Issues in this respect are usually associated with excessive fees, which significantly increase the borrowing costs of a loan, and the failure by traders to fulfil their information obligations towards consumers.

On 11 March 2016, the **amended Act on Financial Market Supervision**²⁶ entered into force, which enhanced consumer protection by introducing changes to the consumer credit law. New limits were set for non-interest borrowing costs, arising, for example, from commissions or loan insurance. In the case of consumers who conclude their contracts after 11 March, their maximum amount may not exceed 25% of the total loan amount and 30% of the variable amount, depending on the period of the loan. In addition, all non-interest charges may not exceed 100% of the total loan amount. The new regulations also impose an obligation on traders to return to the consumer any fees incurred where the loan is not paid to the consumer, also even if the loan contract has not been concluded.

The Authority monitors advertising for the **fairness of marketing messages**. Misleading advertising is a frequent infringement in this respect, for example as regards the actual costs of consumer loans or the actual terms of a promotion.

An example of this type of activity was a proceeding against Alior Bank conducted in 2016. Doubts were raised by the “Lowest Instalment Guarantee” advertising campaign of 2015, which might have been misleading as to the actual terms of the promotion. The bank promised its customers the lowest instalment of the loan but failed to inform them about the additional terms that had to be met in order for him

or her to benefit from the advertised offer. According to the rules of promotion, Alior Bank did not guarantee the lowest instalment on the market, but an instalment lower than that offered by another bank. The consumer had to find such other offer on their own, present an information form confirming the competitive terms or a contract signed with another lender. In the decision issued²⁷ the Authority accepted Alior Bank's commitment to compensate consumers who had used the misleading offer. According to the final decision, the Bank should not charge interest on the existing contracts and reimburse the interest charged, even if the loan has already been repaid. The Bank also committed to inform customers about the reimbursement policy and to broadcast a series of 15-second statement on the Polish Television over its misleading advertising campaign “Lowest Instalment Guarantee”.

In protecting consumers in the financial market, the Authority works closely with other institutions. An example of this type of activity was the shared **position of the Authority and the Financial Ombudsman** issued in May 2016 [on the proportional reduction of all borrowing costs in the case of early repayment of a loan](#). Complaints filed with both institutions indicated that customers who had repaid their loans before the due date did not receive a proportional reimbursement of initial costs, such as administrative fees, commissions, or insurance premiums. In the opinion of the Authority and the Financial Ombudsman, this is a practice that violates the provisions of the consumer credit law. In the case of early repayment of a consumer loan, the lender should reduce and reimburse all the costs of such loan, irrespective of their nature. The reimbursement should be proportional, i.e. should cover the period from the date of actual repayment of the loan to the date of the final repayment specified in the contract. Moreover, the reimbursement should not depend on when the costs were actually incurred by the borrower.

²⁶ The Act of 5 August 2015 amending the Act on Financial Market Supervision and some other acts (consolidated text, Journal of Laws item 1357).

²⁷ Decision [RBG-7/2016](#).



1.3.2. Telecommunications sector

One of the areas where numerous consumer complaints have been received for years is the telecommunications market, which was one of the priority areas for the Authority's activities in 2016.

Measures were continued against unfair practices of telecommunications operators, consisting of **a unilateral change in terms of the contracts**. In 2015, the Authority issued its decisions to Canal+, P4, T-Mobile Polska, and Multimedia Polska²⁸, while in July 2016 the proceeding against UPC was completed²⁹. It was found that the company illicitly informed consumers of an increase in the subscription fee for Internet access, since the contracts did not contain a relevant modification clause describing the circumstances in which the trader had the right to increase this amount. Consumers could not use the existing offer unless they had paid a higher price. The alternative was the termination of the contract. A fine of PLN 817,64 was imposed on UPC for illicit practices. At the same time the trader was obliged to remove the effects of the change detrimental to customers in the form of public compensation. Should the decision become final, the subscribers should receive a refund for each month they paid the increased fees until June 2016. The trader appealed against the decision.

The Authority also charged an operator in Wielkopolska Province, Inea, with unilaterally changing contracts. The proceeding conducted since June 2015 showed that the company, at the turn of 2014 and 2015, unilaterally changed the contracts twice, increasing the monthly fees for the Internet and television services. The price increases concerned both definite and indefinite term contracts,

although the contracts did not provide for an appropriate modification clause also in this case. The operator made a voluntary commitment to change the practice still in the course of the proceeding. In a decision issued in 2016³⁰ the Authority accepted the company's commitment to reimburse the illicitly charged higher fees. The decision further set out detailed rules for the reimbursement and information to existing and former customers about this fact. The decision is final.

When issuing decisions concerning infringements of collective consumer interests, UOKiK may apply **public compensation**, i.e. impose remedies to eliminate the ongoing effects of the infringement. Public compensation, since it does not apply to a single harmed consumer but collectively to consumers, may take different forms, such as cash benefits paid to consumers or non-cash consumer benefits.

It is also unlawful to **renew definite term contracts for the provision of telecommunications services for another definite term without an express consent of the consumer**. For this type of practice, UOKiK imposed a fine of PLN 28,6 M on Orange Polska³¹. The proceeding was initiated in 2014 after the Authority had received a series of complaints from consumer ombudsmen and consumers using the services of the company. If the customer took no action before the end of their contract, it was converted into another definite term contract (for 6, 12 or 24 months). Consumers who terminate their contract early were charged with high penalties. Moreover, Orange Polska did not always provide its customers with clear information about the actions they could take in order to prevent their

²⁸ Decisions: [DDK-2/2015](#), [DDK-14/2015](#), [DDK-28/2015](#), [DDK-30/2015](#). Detailed information: [Report on activities 2015](#), p. 20.

²⁹ Decision [RBG-5/2016](#).

³⁰ Decision [RPZ-4/2016](#).

³¹ Decision [DDK-26/2016](#).

subscription from being renewed automatically. In the course of the proceeding, the company partially changed the practice, allowing contracting consumers to choose the renewal options. The consumer could keep the current terms and continue the contract for another definite term, or could choose to terminate the contract free of charge at any time (indefinite term) or decide to have the contract expired upon the end of the promotion. The challenged practice may last for contracts concluded (or renewed) at least from November 2010. In the justification of the fine, UOKiK pointed to the long-term nature and considerable reach of the illicit activity. In addition to the fine, UOKiK applied public compensation, obliging Orange Polska to reimburse its former subscribers for the charges caused by early termination of the automatically renewed contract. The operator should also allow existing subscribers to terminate such renewed contracts without any consequence, and inform its customers via www.orange.pl and by post. The company appealed against the decision.

Another example of unfair practices used in the telecommunications industry is **misleading consumers as to the identity of the service provider**. In February 2016, UOKiK initiated proceedings against PGT operating under the name Telefonía Polska Razem, and also issued **a consumer warning** on this matter. The trader offers telecommunications services over the telephone and at customer's home. Numerous complaints from consumers, mainly the elderly and their families, concerned the impersonation of an operator with whom they had concluded a contract before. Representatives of the company informed consumers that by signing the documents they only changed the existing terms and conditions, while in practice it meant changing the operator and concluding a new contract. At the same time, the signed documents were not passed to consumers, which hindered subsequent withdrawal. In addition, those who wanted to withdraw from the contract were charged fees in the amount from PLN 500 to PLN 1500. In this situation, many consumers may have decided to continue their contract with PGT. During the proceedings UOKiK verified, among others, the telephone conversations with consumers and also heard witnesses, former and existing employees of PGT partner entities. In the Authority's opinion, the trader deliberately misrepresented itself in order to attract as many customers as possible while causing significant financial losses on their side. The maximum fine was imposed on PGT for each of the practices, as provided for by the legislation, i.e. nearly 10% of the turnover realised in the preceding year. The sanction amounted to over PLN 1.97 M³². The trader appealed to SOKiK.

³² Decision [RPZ-10/2016](#).

Misleading advertising messages are another infringement found in the telecommunications market. Frequent infringements involve misrepresentation of information in the advertisement, i.e. showing the benefits of the offer and omitting its limitations. Meanwhile, the key information for the evaluation of the offer as a whole should be presented in a similar way (e.g. time limitations of the presented price should be presented together with this price).

In 2016, UOKiK completed the proceedings against Cyfrowy Polsat and Polkomtel in connection with the advertising of the smartDOM and Power LTE service packages. Consumer complaints received by the Authority concerned advertisements from 2014, the Power LTE – Unlimited LTE data transfer promotion, published in the press, electronic media and on billboards. The actual terms of the Power LTE promotion limited both data transfer size (data packages) and data transfer rates once the package has been used up, down to 32 kbps. In the same year, the companies also broadcast TV commercials, which suggested that a service package with a smartphone, tablet and TV set could be obtained for PLN 61 per month. In fact, the offer only included the price of the service provided and the equipment had to be paid additionally. For violating the collective consumer interests, UOKiK imposed fines in the total amount of PLN 40.4 M³³ (PLN 30.7 M on Polkomtel and PLN 9.7 M on Cyfrowy Polsat). The traders appealed against the decisions issued to SOKiK.

UOKiK also challenged the practices of Vectra, which offered access to cable television, the Internet and fixed-line telephony. Doubts were raised by the advertising campaign "All for PLN 10" (September-December 2015) broadcast on radio and television, among others. However, the messages failed to inform consumers that the advertised amount is only a form of time-limited promotion (2-3 months) and that after this period the costs of individual services would be higher. In a decision issued in 2016³⁴ UOKiK accepted Vectra's commitment to make public compensation to former and existing subscribers who had used the promotional offer "All for PLN 10", and to inform them of this fact. For existing customers, the compensation means the possibility to obtain an additional package for each service they use, such as additional minutes for phone calls, or a three-month discount of PLN 10. Former subscribers will receive PLN 30 for each service purchased under the promotional offer.

UOKiK received uneasy signals concerning the **failure to make available to consumers the recordings of**

³³ Decisions: [RKR-14/2016](#), [RKR-15/2016](#), [RBG-10/2016](#).

³⁴ Decision [RKR-11/2016](#).

sales calls, during which the terms of the contract with the service provider were agreed. This is particularly important in the course of complaint procedures, where due to the impossibility for the consumer to verify the recording the service provider may be able to unilaterally interpret the agreements made. Consequently, in 2016, UOKiK issued soft calls to the top ten service providers, pointing to unfair practices in this regard. In response, the Play network operator, P4, voluntarily changed its practice and made available to consumers the recordings of sales calls, during which the terms of a new telecommunications service contract were agreed. For the other mobile operators, i.e. Orange Polska, Polkomtel and T-Mobile Polska, an investigation was initiated in 2016 in view of no response from these traders. Activities were also continued towards cable and satellite TV service providers, part of which committed to change their practices.

The increased activity of UOKiK in the telecommunications and e-commerce markets was accompanied by educational activities. In 2016, the annual World Consumer Rights Day event³⁵ was devoted to the debate “**Consumer on the telecommunications and e-commerce market**”. During the discussions it was stressed that modern information technologies pose a challenge for the proper functioning of the rights and obligations of both traders and consumers. The discussions touched, among others, on the issue of messages addressed by traders to specific consumers in promoting products or services. UOKiK emphasised that a fair information message should take into account the true purpose of contact and data acquisition as well as the extent of their possible disclosure to other entities.

³⁵ The World Consumer Rights Day is celebrated annually on 15 March. The debate was organised on 16 March 2016.

1.3.3. Energy sector

As in the case of the telecommunications market, numerous complaints concerned **misleading consumers as to the identity of the trader** in the energy market.

In 2015, UOKiK initiated proceedings against three electricity distributors,³⁶ including Polska Energetyka Pro, currently Polski Prąd i Gaz. In 2016, the Authority issued a decision³⁷ against that trader, stating numerous violations, including the impersonation of the current operator. Representatives of the company suggested that the documents to be signed constitute an annex to the existing contract, which had to be entered into due to amendments to the law or a merger of companies, for example. Pressure was put on consumers, among others through statements that a failure to sign the documents would result in electricity being cut off. Moreover, there were also cases of misrepresentation of the electricity bill amounts, and of failure to pass a copy of the contract to the consumer, along with information about the right of withdrawal with the contract form. As a result, UOKiK imposed a penalty of more than PLN 10 M and ordered the discontinuation of the challenged practices. The decision is not yet final, the company appealed to SOKiK.

In 2016, a similar proceeding was initiated against another trader from this industry, Energa Obrót. According to complaints received by UOKiK, when selling services under the “Fixed Price Guarantee” offer, representatives of the company who visited potential customers in the place of residence claimed to be their current electricity supplier. The need to sign documents was justified, for example, by the need to update existing contracts or a change in the method of settling the accounts for consumed electricity. In fact, a comprehensive contract was concluded with Energa Obrót SA and the service provider was changed, while customers did not receive a copy of the contract. UOKiK’s charges also concerned contracts concluded by telephone, including misrepresentation of the right of withdrawal.

³⁶ Detailed information: [Report on activities 2015](#), p. 21.

³⁷ Decision [DDK-25/2016](#).

1.3.4. E-commerce sector – Internet sales

The amendment to the Consumer Rights Act, which entered into force at the end of 2014, enhanced the legal protection of retail customers purchasing online. Unfortunately, in 2016 UOKiK kept receiving signals of violations of the law.

An important component of sales is **accurate information about the price** of products or services offered. During the proceedings in 2015 UOKiK issued the first consumer warning concerning the owner of Invest Net Braniewski Tomasz³⁸. The trader, through its websites, provided agency services for the sale and rental of real estate. When posting their offers, consumers were not informed that after a time the service became a paid service, which they only learnt about on receipt of a call for payment. Moreover, the trader did not fulfil a number of information obligations, and the anticipated notice period prevented the immediate withdrawal from the service contract. Invest Net closed all its associated websites and discontinued the illicit practices already in the course of the proceedings. The proceeding, which lasted up to 2016, ended with the Authority's acceptance of the trader's commitment³⁹ to reimburse customers for the undue charges. According to a final decision, consumers should be informed by e-mail that their contracts were not effectively entered into, which precluded any financial obligations on their part towards the trader, and that they could request a refund of the undue charges.

One of the violations is **misleading as to the consumer's right to withdraw from the contract**. This type of practice was used by an online store operated at emistomarket.pl and dom-lazienka.pl, which offered white goods. The store rules contained misleading information about the time limit for withdrawal. Furthermore, the time limit for return of money to customers was described unlawfully, as it was calculated from the date the seller received a shipment of the goods instead of the date of withdrawal by the buyer. In the case of withdrawal from the purchase, the rules provided only for the return of the price of the goods, while it should also cover the costs of delivery. In a decision issued in 2016⁴⁰ UOKiK ordered the abandonment of the described practices and imposed a fine on the trader, in the amount of over PLN 46 k. The decision is final.

³⁸ Detailed information: [Report on activities 2015](#), p. 21.

³⁹ Decision [RWA-7/2016](#).

⁴⁰ Decision [RtO 8/2016](#).

1.3.5. Off-premises sales

Numerous complaints filed with UOKiK relate to off-premises contracts, e.g. at the consumer's place of residence or during a presentation organised by a trader in hotels, sanatoria, etc. Unfair practices in this area typically involve concealment of the trader's identity, the genuine commercial purpose, the failure to pass a copy of the contract to the consumer, and the consequent prevention of withdrawal from the contract. The activities of UOKiK are most often initiated against traders offering energy and telecommunications services, paramedical products, cooking equipment, linen.

An example of unfair market practice comes from the activities of VRM Group, which invited consumers (by telephone and by post) for cardiovascular tests. Meanwhile, the purpose of the meetings was to present an offer for the sale of paramedical equipment under the name GPM (magnetic field generator). When inviting consumers the trader was obliged to inform them about the true purpose of presenting its current offer and entering into a sale contract. In addition, VRM persuaded consumers that cardiovascular tests were performed in collaboration with Adam Mickiewicz University in Poznań. According to UOKiK, participants of the meetings were misled because the company had only a civil legal agreement with one of the university employees. UOKiK ordered the discontinuation of the challenged practices. Moreover, a penalty was imposed on the trader in the amount of over PLN 145 k⁴¹. The trader appealed to SOKiK.

2. Court judgements in cases concerning the infringement of collective consumer interests

In 2016, the Court of Competition and Consumer Protection (SOKiK) issued **36** judgements concerning appeals against UOKiK's decisions in cases of violations of collective consumer interests. The Court of Appeal in Warsaw (SA in Warsaw) issued **34** such rulings, and the Supreme Court (SN) **1** such ruling. In **21** cases SOKiK dismissed the appeal of traders, in 6 cases it changed the decision and in **9** cases it revoked the decision of UOKiK⁴².

⁴¹ Decision [RPZ-2/2016](#).

⁴² The decisions passed after 1 September 2015 are published in [a database of court judgements](#).

Table 3. Statistics of judgements in cases concerning infringement of collective consumer interests in 2014-2016

	SOKiK	SA in Warsaw	SN
Judgements passed in 2014	113	34	1
Judgements passed in 2015	65	44	4
Judgements passed in 2016	36	34	1

Table 4. Conclusions of SOKiK’s judgements in cases concerning infringement of collective consumer interests in 2014-2016

Year	2014		2015		2016	
	Number	%	Number	%	Number	%
Conclusions of SOKiK’s judgements						
UOKiK’s decision revoked	13	11.5	16	25	9	25
UOKiK’s decision changed	26	23	7	11	6	17
Trader’s appeal dismissed	74	65.5	42	64	21	58

Examples of court judgements

SOKiK’s judgement of 13 October on the appeal of **“ZdroWita”** in Opalenica⁴³

In 2013, UOKiK imposed a fine of over PLN 22 k on the trader operating under the name “ZdroWita”⁴⁴. The Authority charged the trader with suggesting to consumers that the devices offered had medicinal and rehabilitation properties, while they were actually relaxation products deprived of medical properties. In addition, consumers were misinformed about their right to withdraw from the contract entered into off the business premises. The content of the contract suggested to customers that they would have to pay for exercising their right to withdraw from the contract. The trader appealed to SOKiK, which upheld the decision of the Authority. No further appeal was filed.

SOKiK’s judgement of 21 October on the appeal of **Polmlek Grudziądz sp. z o.o.**⁴⁵

In 2014, UOKiK imposed a fine of over PLN 1.47 M on Polmlek Grudziądz⁴⁶ for misleading consumers. The trader

used the trade name “butter” for products that did not actually meet the requirements for dairy products. SOKiK shared UOKiK’s position on the violation of consumer rights to genuine and reliable product information. It decided, however, to reduce the fine to approximately PLN 1 M, because the Authority’s decision was issued after a change of the company’s owner. No further appeal was filed.

SA’s judgement of 26 June on UOKiK’s appeal for **Rainbow Tours**⁴⁷

In 2013, UOKiK imposed a fine on Rainbow Tours for omission of important information when signing contracts for travel to Thailand. The challenged practice lasted from October 2012 to March 2013. The promotional materials informed consumers about a free trip to Bon Island, although the service was actually to be paid for. A fine of more than PLN 88 k was imposed on the company⁴⁸. As a result of the trader’s appeal, SOKiK revoked the Authority’s decision in 2015.⁴⁹ The Authority referred the case to SA, which upheld UOKiK’s opinion. The court judged that Rainbow Tours misled consumers. However, it decided to reduce the fine by half due to the short duration of the practice and the small number of contracts concluded. The trader filed a cassation complaint with the Supreme Court.

⁴³ File ref. [XVII AmA 73/14](#).

⁴⁴ Decision [RPZ-51/2013](#).

⁴⁵ Decision [XVII AmA 23/15](#).

⁴⁶ Decision [RBG-46/2014](#).

⁴⁷ File ref. [VI ACa 660/15](#).

⁴⁸ Decision [RtO-55/2013](#).

⁴⁹ File ref. [XVII Ama 77/14](#).

SA's judgement of 6 July on the appeal of **Euro Net**⁵⁰

In 2013, UOKiK found that the owner of the online store EURO RTV AGD (www.euro.com.pl), Euro Net, misled its customers. According to advertising messages published from June 2012 to February 2013, the customer would not pay for delivery if they decided to purchase until the nearest Friday. In fact the offer was not limited in time and in the same form began every Monday. UOKiK imposed a fine in the amount⁵¹ of over PLN 0.5 M on the trader, and SOKiK upheld this decision.⁵² The court of first instance shared the findings and conclusions about the practice. In 2016, the Court of Appeal upheld UOKiK's decision but reduced the fine to more than PLN 250 k, as justified by the fact that the campaign only referred to the online store and the trader had discontinued the unfair practice.

SA's judgement of 16 August on the appeal of **Bank BPH**⁵³

The judgement concerned an action brought by the Authority for finding four contractual clauses prohibited. The challenged clauses related to, among others, amending the contract without the consent of the consumer, charging the consumer for debt collection services at the trader's own discretion, the bank's changing fees and charges at any time. SOKiK decided that these were actually abusive⁵⁴. SA upheld UOKiK's position in its entirety and found the clauses prohibited.

SA's judgement of 29 November on the appeal of **ITI Neovision sp. z o.o.**

In its decision issued in 2013, UOKiK stated that ITI Neovision had unilaterally changed contracts for the provision of satellite television services in terms of the service price, programming package and the term of the contract. The content of the contracts with subscribers did not constitute a basis for making such a change and customers were misled upon receiving information about the change. UOKiK further challenged the manner of passing the information about the change to the contract, which was not in any way clarified in the letter that presented mainly the programming offer of the new operator. It was also an illicit action by the trader to give too short a time limit for consumers to decide on a future

contract. For infringement of collective consumer interests, a fine in the amount of PLN 10.8 M was imposed on ITI Neovision, along with the obligation to remove the effects of the challenged actions, including numerous information obligations towards subscribers. In 2015, SOKiK shared UOKiK's position, though it reduced the fine by half. The case was also considered by SA, which in 2016 confirmed the violation of collective interests of consumers, at the same time reducing the fine to PLN 1.2 M.

3. Product safety and market surveillance

UOKiK's powers also cover the protection of the health and life of consumers. UOKiK ensures **surveillance over general product safety**⁵⁵. The Authority's activities in this area include, but are not limited to, proceedings aimed at eliminating the risks posed by products or recalling products from the market. UOKiK also collects information on product safety and data on dangerous products.

UOKiK **monitors the market surveillance system** in Poland and acts as a market surveillance body dealing with traders who market consumer products that do not comply with the requirements of the EU harmonisation legislation. One of the objectives of market surveillance is to ensure that users in the European Union receive only products that meet specific requirements, regardless of which member State they have been manufactured in or placed on the market. UOKiK is one of the institutions responsible for **market surveillance**. Under the proceedings conducted, the Authority has the right to impose specific obligations on economic operators placing dangerous or non-conforming products on the market.

Both in the case of general product safety and market surveillance, inspections are carried out by the Trade Inspection Authority (IH), which reports to President of UOKiK⁵⁶.

3.1. General product safety

UOKiK receives information on dangerous products through Trade Inspection Authority inspections as well as consumer complaints and data from EU Member States via the RAPEX system.

⁵⁰ File ref. [VI Aca 800/15](#).

⁵¹ Decision [RPZ-22/13](#).

⁵² File ref. [XVII AmA 142/13](#).

⁵³ File ref. [VI Aca 892/15](#).

⁵⁴ File ref. [XVII AmC 756/13](#).

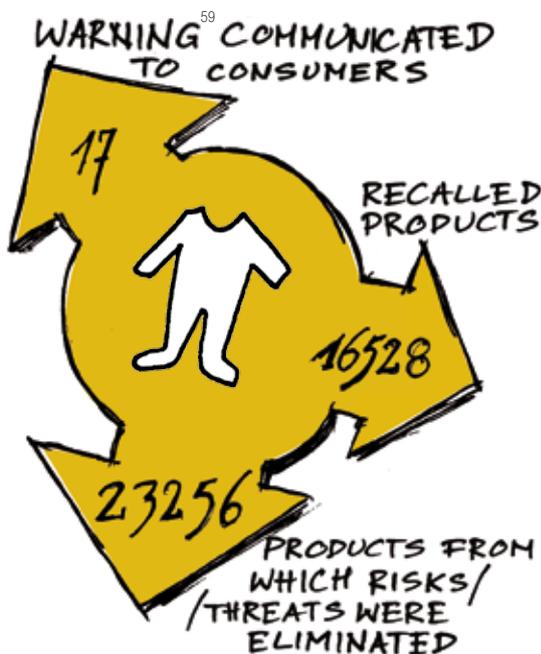
⁵⁵ Surveillance activities are carried out in accordance with the Act of 12 December 2003 on General Product Safety (Journal of Laws of 2016, item 2047). The Act also lays down general requirements for product safety and obligations of manufacturers and distributors in this respect.

⁵⁶ UOKiK prepared plans of inspections to be carried out by IH, i.e. the planned inspections.

On this basis, in 2016, UOKiK conducted **108** investigations and **149** proceedings on general product safety. As in the previous years, activities were undertaken most frequently for children's clothing (151 products). Numerous cases also concerned bicycles and their accessories (35 products) and electrical installation products (27 products). Where a product poses a threat to the life or health of users, UOKiK may impose certain obligations on the manufacturer or distributor, including mandatory product recall or withdrawal (market or consumer level)⁵⁷. The entity responsible for placing a dangerous product on the market may also be fined for an amount of up to PLN 100 k.

In 2016, **138** decisions were issued⁵⁸, under 13 of which UOKiK imposed obligations, and under 29 fines on traders. In the course of proceedings, the vast majority of traders undertake actions aimed at removing hazards or withdrawing dangerous products from the market. For this reason, the proceedings were discontinued in 108 cases.

Effectiveness of UOKiK's activities on the example of children's clothing



⁵⁷ Consumer-level product recall means that the trader must repurchase the product from users at the price at which it was sold, irrespective of the degree of damage to it. A consumer who has a proof of purchase may make such claim to the distributor from whom the product was purchased, and if no such proof exists, directly to the manufacturer.

⁵⁸ The number of decisions issued is not the same as the number of proceedings completed in general product safety cases, as it includes decisions on reconsideration of a case.

⁵⁹ This refers to the number of warnings communicated by traders to consumers at the Authority's request.

Register of dangerous products

UOKiK also runs a national system of information on dangerous products. One of its components is the [register of dangerous products](#), in which products that do not conform to safety requirements are entered. In 2016, **16** products were entered into the register.

Voluntary notifications from undertakings

The trader who determines that its product poses a threat should inform UOKiK about the irregularities detected and the corrective actions taken. The [notifications received](#) are then posted on UOKiK's website, and the Authority monitors the course of corrective actions. In 2016, UOKiK received 175 voluntary notifications from undertakings. As in the previous years, most of the reports related to motor vehicles (149). The other categories concerned electrical equipment, children's articles and toys.

Rapex System

[RAPEX system](#) (Rapid Alert System for dangerous non-food products⁶⁰) provides for the rapid exchange of information between Member States and the European Commission on dangerous products. On this basis, the Commission publishes weekly notifications on its website, concerning products that pose threats to users. UOKiK serves as the Polish RAPEX contact point. In 2016, Member States submitted to the system 2 127 notifications, **47** of which were for products first placed on the EU market by Polish manufacturers (29) or importers (18). In 2016, UOKiK passed via RAPEX **53** notifications of articles hazardous to users found on the Polish market.

3.2. Conformity assessment system

On 20 April 2016, the Act on Conformity Assessment and Market Surveillance Systems entered into force⁶¹. The new law ensures the consistency of Polish legislation with the EU system, in particular by introducing certain obligations on economic operators and improving administrative procedures. This is a horizontal law implementing 13 EU sectoral directives. It covers such product categories as pressure equipment, toys and electrical equipment. The new regulations also introduced a completely different system of sanctions for

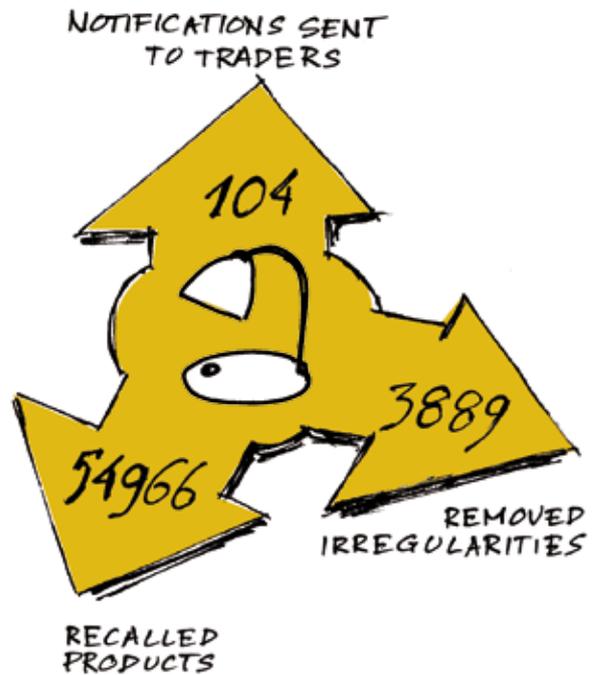
⁶⁰ http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/

⁶¹ Act of 13 April 2016 on Conformity Assessment and Market Surveillance Systems (Journal of Laws, item 542, as amended).

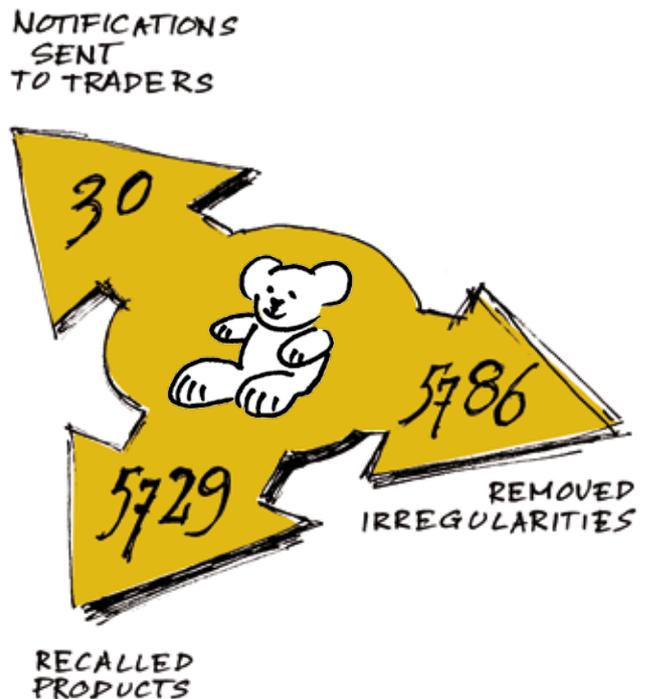
placing non-conforming products on the market. Previously, penal sanctions applied and offences were reported to law enforcement agencies, which conducted penal proceedings, while the amount of fines was decided by common courts. On the basis of the new law, administrative fines will be imposed instead of penalties. The Act is the basic statute which governs the tasks of ten market surveillance authorities, including IH, implemented within the national market surveillance system. In April and May 2016, UOKiK held a series of training sessions for IH inspectors regarding the new regulation, in cooperation with three provincial IH Inspectors.

UOKiK monitors the non-food product inspection system for conformity to the requirements specified in the selected acts of the EU harmonisation legislation⁶². In 2016, UOKiK conducted **78** investigations and **315** administrative proceedings⁶³. Toys (354), electrical equipment (145) and personal protective equipment (36) were the most common items in these activities. If it is determined that a particular product does not conform to the requirements, a decision ordering the removal of non-conformities, product recall or withdrawal is issued. In 2016, the Authority issued **144** decisions, of which 128 discontinuing the proceedings and 16 imposing statutory obligations on traders. The main reason for the discontinuance of proceedings was the submission by traders of evidence for removal of non-conformities, of product recall completion or product destruction in the course of the proceedings.

Effectiveness of UOKiK's activities on the example of toys



Effectiveness of UOKiK's activities on the example of electrical appliances



⁶² These related to over 20 product categories, including electrical appliances (including electronics and white goods), toys, pyrotechnic articles, personal protective equipment, construction materials or machines and elevators. Only articles for which there are essential legal and technical requirements set out in the EU harmonised regulations should be marked with the CE mark. More information on the CE marking is available in the European Commission publication "Commission Notice – Blue Guide on the implementation of EU product rules 2016" (<http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=OJ:C:2016:272:TOC>), a compendium of knowledge on the EU system of conformity assessment and market surveillance.

⁶³ Before 20 April 2016, UOKiK conducted its proceedings exclusively on the basis of the Act of 30 August 2002 on Conformity Assessment System (Journal of Laws of 2016, item 655, as amended), and after that date also on the basis of the new law on conformity assessment and market surveillance systems, since currently both laws are in force. Article 1 (1a) of the Act on Conformity Assessment System lists the products to which it applies. The data provided cover the entire year, irrespective of the applicable law, on the basis of which the activities were completed.

Register of non-conforming or hazardous products⁶⁴

UOKiK keeps [the register of non-conforming or hazardous products](#). It lists a diverse catalogue of non-food products, including toys, radio equipment, construction products or everyday use equipment such as lighting fixtures or chargers. In 2016, 81 products were entered in the register, and 16 products were unlisted due to the fulfilment of statutory requirements⁶⁵.

Cooperation with market surveillance authorities

Where information is obtained on non-conforming products, UOKiK may, among other things, order an inspection or pass relevant information to the competent market surveillance authority. Inspections of marketed products are the responsibility, among others, of the Trade Inspection Authority, which reports to UOKiK. It performs its tasks via provincial inspectors and supporting analytical laboratories. In 2016, the Authority commissioned inspections to provincial IHS in 33 cases⁶⁶ and to Chief Construction Supervision Authority in 2 cases.

ICSMS System

The Information and Communication System for Market Surveillance (ICSMS) enables the collection of information on products that do not meet the requirements of EU harmonisation legislation and the exchange of such information between market surveillance authorities of the EU Member States. UOKiK serves as the Polish Contact Point. In 2016, UOKiK submitted to the system 4 notifications, due to the location of the trader placing a non-conforming product on the market in another EU Member State.

3.3. Supervision of the Trade Inspection Authority

UOKiK plans, coordinates and monitors the inspections concerning services, food and non-food products carried out by Trade Inspection Authority Provincial Inspectorates (WIIH), and analyses their results. The Authority also carries out tasks related to quality control of fuels.

Table 5. Number of inspections conducted by WIIHs to UOKiK's order in 2014-2016

Object of inspection	Number of inspections in 2014	Number of inspections in 2015	Number of inspections in 2016
Agricultural and food products ⁶⁷	2 518	8 914	8 893
Non-food products and services ⁶⁸	1 244	4 369	6 746
General product safety	1 148	985	605
Compliance with New Approach Directives ⁶⁹	1 541	1 557	974

⁶⁴ Until the entry into force of the Act of 13 April 2016 on Conformity Assessment and Market Surveillance Systems (Journal of Laws item 542, as amended) on the basis of the Act of 30 August 2002 on Conformity Assessment System (Journal of Laws of 2016, item 655, as amended), a register of products non-conforming to the essential, specific or other requirements was operated. Currently the register of non-conforming or hazardous products is kept.

⁶⁵ Article 61 (4) of the Act on Conformity Assessment and Market Surveillance Systems.

⁶⁶ 18 inspections commissioned on the basis of market surveillance regulations and 15 inspections commissioned by the Polish RAPEX contact point in connection with notifications from other Member States.

⁶⁷ Data for 2014 include the number of planned inspections ordered by the Authority. Data for 2015-2016 include planned inspections commissioned by the Authority and own inspections carried out by WIIHs.

⁶⁸ Data for 2014 include the number of planned inspections ordered by the Authority. Data for 2015-2016 include planned inspections commissioned by the Authority and own inspections carried out by WIIHs.

⁶⁹ Statistics for 2014-2015 include planned inspections; for 2016 the actual number of inspections carried out is given.

In 2016, there were 18 planned nation-wide inspections of agricultural and food products. Tests carried out covered, among others, [meat products](#) and [organic \(eco\) food products](#). In addition, IH took part in the ad hoc [nation-wide inspection of hospitals](#), due to the numerous complaints of patients on the quality of nutrition. The activity was conducted jointly with the State Sanitary Inspection (PIS). The Trade Inspection Authority verified 99 facilities making and delivering ready meals to hospitals. As a result of the activities completed, irregularities were identified in 61 facilities, i.e. 62.2% of the inspected entities. Objections were mainly caused by the labelling of meals intended for patients, in particular lack of information on allergen content, understated meal weight, use of other products than declared on the menu or agreed in the contract with the hospital and the use of products past the expiry/best before date. The results of the inspections were communicated to the Commissioner for Patients' Rights and to the public.

In 2016, IH conducted **13** nation-wide inspections of **non-food products and services**. These covered, among others, textile products and the labelling of detergents and cosmetics.

In addition, under the EU REACH-EN-FORCE 4 project⁷⁰ the Trade Inspection Authority carried out product inspections for the presence of certain prohibited or restricted substances. By laboratory testing, IH bodies checked the products for presence of substances such as cadmium, lead, nickel and amines. A total of 138 products were tested, i.e. jewellery, haircare products, leather goods, tailor accessories and baby care articles. Irregularities were found for 20 products, which were subsequently recalled.

3.4. UOKiK's laboratories

The Authority operates 8 laboratories, 5 of which perform tests of food products. The scope of activities of the remaining laboratories include testing of fuels, toys, textiles and other non-food products.

⁷⁰ The project is implemented in connection with Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

In 2016, a total of **4 362** samples were tested in all the Authority's laboratories, and 37 991 parameters were determined as the basis for confirmation of product safety or quality. **1 775** samples were challenged.

The Authority's laboratories work in line with the quality management system specifying the general requirements for testing laboratories in accordance with PN-EN ISO/IEC 17025. This standard specifies the requirements for technical competence in the field of measurements, among others. In 2016, UOKiK participated in over 90 proficiency testing programmes in interlaboratory comparative studies.

The laboratories constantly develop advanced research techniques and introduce new research methods, as a result of which, in 2016, 39 new testing methods were accredited at the Polish Centre for Accreditation (PCA). As at the end of 2016, the number of accredited methods in all the laboratories was 560.

3.5. Fuel quality control system

UOKiK manages the fuel quality control and monitoring system 71 which aims to counteract the transport, storage, marketing and collection in company-internal stations, of fuels that do not meet the regulatory quality requirements. UOKiK plans fuel quality inspections carried out by IH, monitors their progress, collects data and develops reports.

IH's fuel quality inspections cover the entire supply chain, from the manufacturers to the fuel stations. The results of the inspections carried out in 2016 showed that the quality of liquid fuels was more often challenged than LPG gas:

- ▶ for liquid fuels – gasoline and diesel – **2.36%** of samples out of 933 samples tested did not meet the quality requirements (in 2015, it was 2.79% of samples);
- ▶ for liquefied gas (LPG), the inspections showed **1.88%** of non-conforming samples out of 491 samples collected (in 2015, 3.91% of samples were challenged).

UOKiK issued 69 decisions in which it obliged traders to pay for the costs of testing if the fuel samples tested did not meet the quality requirements. The Authority also

⁷¹ Act on 25 August 2006 on Fuel Quality Monitoring and Control System (consolidated text, Journal of Laws 2016.0.1928).



conducts proceedings for appeals against decisions issued by provincial IH inspectors, who impose sanctions on inspected businesses for failure to post information on the content of bio-components in the offered liquid fuels at their fuel stations.

On 2 September 2016, the amended Act on Fuel Quality Monitoring and Control System entered into force⁷². IH's tasks were extended to include checks of the possession of fuel trade licenses and issuance of decisions on entry into the register of fuel importers. Moreover, the Authority was obliged to make available on the Public Information Bulletin (BIP) websites the [registers](#) of fuel traders, which enhances transparency of the business activities in this market segment.

UOKiK also collects any information about fuels of improper quality, from drivers, the police, customs offices, tax authorities, etc. These data are taken into account when planning further inspections. In 2016, UOKiK received **847** notifications, almost 23% more than in 2015.

On the basis of the inspection results, UOKiK publishes on its website [a list of inspected wholesalers and fuel stations](#), including the stations inspected in connection with complaints on improper fuel quality received from drivers. The list is updated once on the monthly basis⁷³.

4. Cooperation with consumer organisations

UOKiK works closely with non-governmental organisations involved in the protection of consumer rights, including the provision of assistance in individual cases. Joint activities

⁷² Act of 22 July 2016 amending the Energy Law Act and certain other acts (Journal of Laws of 2016, item 1165).

⁷³ Complaints can be submitted using the form provided on UOKiK's website at: http://www.uokik.gov.pl/zgloszenie_paliwa_zlej_jakosci_formularz.php.

relate to education and information policy, counselling, signalling threats, and also, issuing opinions on legal acts.

The Authority also delegates selected tasks for consumer protection to NGOs. Funds allocated for this purpose are transferred under calls for proposals⁷⁴. In 2016, UOKiK, allocated a total of nearly PLN 2.7 M for grants.

In addition, UOKiK works closely with the European Consumer Centre (ECC), which operates within the European Consumer Centres Network (ECC-Net). ECC's mission is to inform consumers about their rights in relation to cross-border purchases of goods and services and to help resolve any disputes related to this type of purchase.

Table 6. Statement of grants awarded

Task	Organisation	Grant amount	Effects
Free counselling and legal assistance	Polish Consumer Federation	PLN 1.1 M	Advice given – 63 515 cases
Consumer E-Counselling Centre (two-year contract) – 2016	Association for the Districts	PLN 225 k	Advice provided electronically – 22 245 cases
Consumer helpline in 2016-2017 (two year contract) – 2016	Association of Polish Consumers and Consumer Foundation	PLN 751 k	Advice provided via helpline – 38 450 cases
Free Christmas Legal Assistance for Consumers in 1-30 December 2016.	Polish Consumer Federation	PLN 203 k	Direct counselling in 17 supermarkets (in 16 cities), a total of 952 hours of counselling. In addition, online counselling was provided via Facebook profile.
	Association for Social Education, Innovation and Development "Dextrum"	PLN 180 k	Direct counselling in truck campers located in front of selected large-scale stores – 1 091 tips. Two truck campers visited 12 cities in Poland.
	Consumer Foundation	PLN 160 k	Counselling via online form – 2 520 e-mail tips and 4 308 pre-defined tips.
	Foundation for Legal Education I and the Law	PLN 30 k	Lectures for seniors in selected sanatoria (Busko Zdrój, Nałęczów and Szczawno Zdrój) and online assistance stand-by via the organisation's website.
	Association of Education and Support Centre RES-GEST	PLN 25 k	Counselling for people with hearing impairment – 28 consumer films and online assistance stand-by.

⁷⁴ The rules for commissioning tasks to NGOs for consumer protection and the funding procedures are laid down in the Act on Public Benefit Activities and Volunteer Work. The amount of funding that may be allocated for such activities is determined annually in the State Budget Act. Information about calls for proposals is posted on UOKiK's website and in UOKiK's Public Information Bulletin, and also made available at UOKiK's premises.



II. COMPETITION PROTECTION

Competition is a prerequisite for economic growth, benefiting both entrepreneurs and consumers. It positively influences the development of the quality and innovation of products as well as the pricing levels.

UOKiK's activities in the area of competition protection include:

- ▶ counteracting competition-restricting practices,
- ▶ controlling concentration,
- ▶ monitoring state aid.

5. Competition-restricting practices

Competition-restricting practices may take the form of anti-competitive agreements or the abuse of a dominant position.

The ban on **anti-competitive agreements** includes any arrangements between independent traders, the **purpose or effect** of which is to eliminate, restrict or distort competition.

Prohibited agreements may in particular include price fixing, collusive tendering (bid rigging), agreements for dividing up sales or purchase markets⁷⁵. However, the regulations

⁷⁵ A sample catalogue of competition-restricting practices is given in Article 6 (1) of the Act on Competition and Consumer Protection (the ACCP).



provide for a few exceptions to the general ban, i.e. agreements of minor importance, block exemptions and individual exemptions, if statutory requirements are met⁷⁶.

The **abuse of a dominant position** is also prohibited, that is, the behaviour of a trader with a significant market position which leads to the distortion of competition in the market. It leads to the restriction on the freedom of activity for business partners and competitors, by imposing less favourable cooperation rules than would be possible under conditions of effective competition, as well as the elimination of competitors or blocking new entrants⁷⁷.

⁷⁶ Articles 7 and 8 of the ACCP. All the regulations of the Council of Ministers concerning the exemption of certain agreements from the general ban on competition-restricting agreements are available on UOKiK's website.

⁷⁷ A sample catalogue of practices constituting an abuse of a dominant position is given in Article 9 (2) of the ACCP.

Antitrust proceedings conducted by UOKiK in connection with charges of violation of competition rules may concern traders and, in certain cases, also their managers. These proceedings may result in an order to discontinue a competition-restricting practice and a fine imposed on a trader. There is also the possibility of an amicable settlement of the proceeding with a commitment decision or with a voluntary submission to penalty.

Antitrust law permits a reduction or a renouncement of a penalty:

- amicable settlement of antitrust proceedings:
 - » issuance of a commitment decision, where the commitment enables the trader to eliminate certain irregularities from the market and avoid fines;
 - » voluntary submission to penalty, where a trader pleads guilty of the charges made by UOKiK in antitrust proceedings and resigns from the appeal proceedings (a reduction of fines by 10%);
- leniency/leniency plus programme, where a trader who has entered into a competition-restricting agreement may seek renouncement or reduction of fines if they plead guilty of participating in the agreement and present information and evidence of the practice to the Authority.

UOKiK also uses **soft calls** to discontinue the practice, without having to initiate proceedings against a trader. The solutions of this type are applied in particular in the case of less harmful infringements, where the application enables a faster elimination from the market than formalised proceedings.

In 2016, UOKiK initiated **21** proceedings in cases of competition-restricting practices and **96** investigations in this regard. A total of PLN **3.8** M fines were imposed.

Antitrust proceedings concerning competition-restricting practices are initiated only ex officio. However, this does not preclude the possibility of a written notification to UOKiK about a suspected use of illicit practices.

Table 7. Number of proceedings in cases of competition-restricting practices in 2014-2016

	2014		2015		2016	
	Initiated	Conducted	Initiated	Conducted	Initiated	Conducted
Antitrust proceedings, including:	64	96	34	71	21	51
Antitrust proceedings concerning horizontal agreements ⁷⁸ , including:	15	20	11	25	14	29
– conducted on the basis of Article 101 TFEU ⁷⁹	0	2	0	2	0	1
Antitrust proceedings concerning vertical agreements ⁸⁰ , including:	3	11	0	5	0	4
– conducted on the basis of Article 101 TFEU	0	0	0	0	0	0
Antitrust proceedings concerning the abuse of a dominant position , including:	46	65	23	41	7	18
– conducted on the basis of Article 102 TFEU	0	1	0	1	0	0
Proceedings concerning a fine to be imposed on a trader ⁸¹	4	10	21	26	8	12
Preliminary investigations	324	551	177	378	96	175

⁷⁸ Parties to horizontal agreements are competing companies, i.e. entities operating on the same market level. Their main purpose is to limit mutual competition, e.g. by price fixing.

⁷⁹ Whenever the practice concerned may affect the trade between EU Member States, antitrust proceedings are also conducted on the basis of EU legislation, i.e. Articles 101 and 102 TFEU).

⁸⁰ Vertical agreements are concluded between companies operating at different market levels, i.e. entities not competing with each other. The parties may be, for example, a manufacturer and a distributor or a wholesaler and a retailer.

⁸¹ Statistics include proceedings concerning a fine to be imposed for: failure to perform or undue performance of the decisions issued by UOKiK (also for the inspection of such decisions), failure to provide or provision of false or misleading information and failure to cooperate in the course of an inspection or a search.

Table 8. Number of decisions issued in 2014-2016

Type of agreement	2014			2015			2016		
	Horizontal	Vertical	Abuse of a dominant position	Horizontal	Vertical	Abuse of a dominant position	Horizontal	Vertical	Abuse of a dominant position
Decisions recognising a practice as restricting competition and ordering its discontinuation	1	2	9	2	0	7	0	0	3
				1 ⁸²					
Decisions recognising a practice as restricting competition and confirming its discontinuation	12	3	11	7	0	4	7	3	5
Commitment decisions	0	0	25	0	1	11	0	0	4
Total	13	5	45	9	1	22	7	3	12
				1					
Decisions imposing a fine ⁸³	0	4	0	2	0	4	1	0	1
Proceedings discontinued by virtue of a decision:									
due to non-finding of a competition-restricting practice	1	1	3	1	0	7	2	0	2
for other reasons	0	0	1	1	0	0	0	1	0
Proceedings discontinued by virtue of a resolution	0			1			0		

The number of proceedings and decisions lower than in the previous years (Tables 7 and 8) is associated with the application of soft calls by UOKiK. In 2016, **37** out of **44** such interventions were closed, in 23 of which the trader fully followed UOKiK's recommendations⁸⁴.

The decrease in the number of proceedings is also a result of education projects conducted in relation to specific markets. UOKiK's experience shows that some of the violations result from the lack of knowledge of antitrust law in the areas concerned. An example of such sectors is the cemetery services market⁸⁵ and the water supply and sewerage services market (more on this later in this chapter). Among the proceedings closed in 2016, these two sectors accounted for most of the cases.

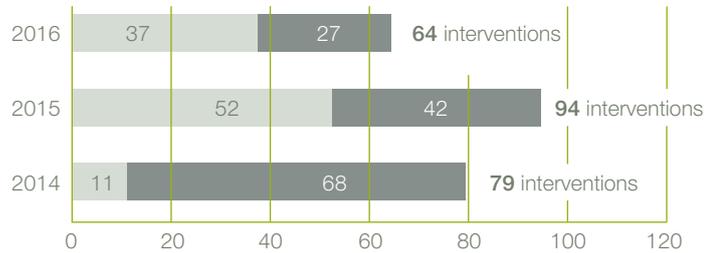
⁸² Decision on a vertical-horizontal agreement.

⁸³ Statistics include proceedings concerning a fine to be imposed for: failure to perform or undue performance of the decisions issued by UOKiK (also for the inspection of such decisions), failure to provide or provision of false or misleading information and failure to cooperate in the course of an inspection or a search.

⁸⁴ In 3 cases the trader did not follow the recommendations and in 11 cases the infringement was not confirmed.

⁸⁵ More information: [Report on activities 2014](#), [Report on activities 2015](#).

Chart 2. Number of completed interventions of the Authority in the market in 2014-2016 (proceedings and soft calls in antitrust cases)



5.1. Examples of activities concerning competition-restricting practices

UOKiK's constant priority is to increase the rates of detection of illicit agreements. To this end, the Authority identifies and monitors markets in which it recognises a higher risk of distortion of competition. The selection criteria are, among others, a significant concentration of market shares, a small number of market participants, unjustified price changes. The sectors selected in this way are further analysed and evaluated. UOKiK also monitors markets with a high level of concentration, due to the possibility of abuse of a dominant position by entrepreneurs operating in such sectors. Local community utilities and services markets, such as water supply, sewerage, public transport and funeral services, remain an important area of the Authority's activity. The distortions of competition in these markets are often not noticeable on the national scale but affect the functioning of local communities.

5.1.1. Illicit agreements

Price fixing

Illicit agreements may take the form of **price fixing** that can be arranged, for example, **between manufacturers and distributors** (vertical agreements).

Examples of this type of activity were the practices used by Termet, a manufacturer of boilers and water heaters, and its distributors. The company set minimum resale prices for its products in commercial contracts. The distributors would instruct the customers/retailers on the level of retail prices recommended by the manufacturer. They also reported

sellers who did not follow these guidelines. As a result of the agreement, Termet was able to prevent its distributors from directly determining the prices of the products resold. In this way, customers, and then consumers, could receive a more expensive product than that in the context of undistorted market competition. In the course of the proceedings, the traders discontinued their illicit agreement, and in this way the distributors avoided sanctions in the form of fines. UOKiK imposed a fine in the amount of nearly PLN 231 k on the initiator of the practice, the company Termet⁸⁶. The company appealed to SOKiK.

In 2016, proceedings were also closed on price fixing for cleaning products and hygienic materials, such as paper towels and liquid soap. Companies of SCA Hygiene, then SCA Hygiene Products⁸⁷, colluded with distributors on fixing the minimum resale prices of products for institutional clients, including businesses, offices, hotels, restaurants, shops. In the course of the proceedings it was found that the competition-restricting practices lasted at least from 2010 to 2013. They consisted, among others, in limiting the distributor's options to set prices below the agreed distribution price list and informing distributors about the negative consequences of failure to follow the pricing policy. The fines imposed on the collusion participants totalled over PLN 3.2 M⁸⁸. A mitigating circumstance was, among others, that the trader discontinued the illicit practice. One of the companies, Smarth, avoided financial sanctions because it decided to cooperate with the Authority under the leniency programme. During the proceedings UOKiK held an administrative hearing to hear the parties. UOKiK's decision was appealed against to SOKiK.

⁸⁶ Decision [RKT-8/2016](#).

⁸⁷ As a result of business transformations in the SCA group, the company started selling the products via independent distributors.

⁸⁸ Decision [DOK-2/2016](#).

A tacit acceptance can be a form of acquiescence to an illicit agreement. A trader who does not participate in the illicit agreement should prove that it has openly distanced itself from the arrangements.

Another example of price fixing was an agreement on ski equipment and accessories. Fordex, the exclusive distributor of Nordica brand in Poland, fixed the minimum sale prices of ski equipment in the chain stores owned by Intersport. The arrangements were made orally or by e-mail. The collusion spanned at least five years and lasted until 2012. UOKiK sourced information about the collusion among others after searching the premises of one of the traders, and also from the company Intersport itself, which decided to cooperate with UOKiK under the leniency programme. For this reason, UOKiK did not impose a financial sanction on the company, which would have amounted to over PLN 312 k if the leniency programme had not been applied. A fine of more than PLN 72 k was imposed on Fordex.⁸⁹ The company appealed to SOKiK.

The law also bans **price fixing for goods or services by business associations**, e.g. trade organisations, chambers of commerce. In 2016, UOKiK confirmed⁹⁰ that such practices were applied by the Association of Polish Centres for Infertility and Reproductive Medicine (ZPOLNiWR). This trade organisation fixed prices as submitted by its members to the call for proposals announced by the Ministry of Health for the selection of contractors under the healthcare programme "Infertility Treatment by Insemination for 2013-2016". The arrangements had a form of informal recommendations, passed during meetings and in electronic correspondence. Their aim was to limit price competition between affiliated traders, based on the knowledge that price was one of the criteria for assessing the tender bids. In UOKiK's opinion, the conduct of the Association led to an increase of the average bid value in the call, which affected public spending. For infringement of competition law, UOKiK imposed a fine of more than PLN 13 k on the Association of Polish Centres for Infertility and Reproductive Medicine. The decision is final, no appeal was filed.

⁸⁹ Decision [DOK-1/2016](#).

⁹⁰ Decision [RtO-4/2016](#).

The detection of local collusive tendering or bid rigging is of particular importance, since it is under public procurement that contracts are entered into for key investments for local communities. It is certainly more difficult to detect collusive tendering for an external entity, which has only economic tools, than for the entity that organises the tender, which can directly observe suspicious conduct of the tenderers.

Collusive tendering

Illicit agreements may take a form of **collusive tendering**, particularly arrangements **between competitors** taking part in the same tender. Such agreements may consist in bid rigging, i.e. all kinds of actions which ultimately prevent the most advantageous bid in a tender from being taken into account. This makes it possible for another collusion participant to win the tender.

Collusive tendering may include agreements consisting in **unilateral communication of information to a competitor or competitors**. In 2016, UOKiK closed the proceedings against two companies in connection with a tender organised by the Ministry of Justice. The public procurement proceeding of 2013 concerned the provision of training courses and sessions for those in correctional homes and youth shelters. Tezaurus Grupa Doradcza presented the most advantageous bid, however, the entrepreneur did not submit all the required documents. It did not provide any relevant supplementations to the proposal either, so the contract was awarded to Centrum Rozwoju Administracji (CRA). Both companies submitted similar bids in terms of text formatting and even punctuation errors. The findings of the Authority show that the entrepreneurs initially intended to bind cooperation under the tender procedure. Tezaurus was to share its potential, in the form of required experience, with CRA. This would be in line with the public procurement law. However, cooperation was not finalised and CRA acquired another partner. Tezaurus decided to bid autonomously, despite failing to meet all the requirements. Its proposal was based on the bid acquired from CRA during the initial arrangements, including a detailed valuation of the service, the price of which was decreased by the amount of profit assumed for CRA. Tezaurus was not able to acquire a partner that would allow it to meet all the criteria, so it did not eventually provide the contracting authority with supplementary tender documentation.

In its decision UOKiK stated⁹¹ that the parties to the proceedings had concluded an agreement consisting in the transfer by one trader to the other of the price

⁹¹ Decision [DOK-3/2016](#).

information and other terms of the bid. Regardless of the subjective perceptions of entrepreneurs and their intentions, from the legal point of view a transfer of strategic information about the bid and its acceptance by the other party should be regarded as an agreement aimed at restricting competition. In UOKiK's opinion, the entrepreneurs crossed the boundaries of the permitted cooperation in the framework of pre-tender negotiations. In the case of bids that assume sharing of a potential, the contractor must submit to the contracting authority a written statement of the entrepreneur with whom it cooperates. It is a commitment to make available to the contractor the necessary resources for the duration of the contract. To submit such a statement, Tezaurus did not need detailed information on the price and other terms of CRA's bid. Moreover, this information was provided at a time when the entrepreneurs had not decided yet to actually cooperate. In addition, the knowledge acquired by Tezaurus influenced its submitted bid. In view of the circumstances of the case, UOKiK decided to waive the penalty. First of all, the unprecedented nature of the proceeding was taken into account, where the Authority for the first time ever assessed the issue of unilaterally sharing confidential information during the negotiations on cooperation under the public procurement system. Due to the lack of case law in this regard, entrepreneurs may have acted in an erroneous conviction as to the compliance of their conduct with the law. The decision is final.

Prohibited market allocation schemes

Collusions between traders who compete in the same market sectors may also involve **a market allocation scheme**. It may take the form of a division of the territory in which the entrepreneurs operate or a division of the pool of product buyers.

At the end of 2016, UOKiK initiated two proceedings against sellers of industrial cattle feed. The case concerns the possible division of the market between Polmass and its competitors: Ekoplon (first proceeding) and Agro-Netzwerk Polska (second proceeding). The charges refers to the division of the domestic market for feed, in particular as regards the sale of milk replacers for cattle. The Authority will check whether arrangements have been made, consisting in refraining from offering products to the recipients supplied by another participant in a possible agreement. This type of conduct would limit access to animal feed, among others for cattle breeders, feed distributors, and would also influence the pricing of these products. In the course of the proceedings UOKiK took advantage of the power to search the premises of entrepreneurs and obtained evidence in the case.

Illicit arrangements between competitors were discussed during UOKiK's international workshops "Cartels, information sharing and leniency procedure" in October. The meeting's agenda featured a discussion on modern methods of detecting cartels and the effectiveness of leniency procedures. Among the barriers to the application of the leniency programme were fears of the applicants of having their applications rejected, or of possible claims by those seeking damages for losses resulting from the operation of the cartel. Other reasons are rooted historically, whereby disclosing information about illicit practices not socially acceptable.

5.1.2. Abuse of a dominant position

A market in which numerous UOKiK interventions are taking place is the water supply and sewerage sector. This is a characteristic industry, in which companies operate in a monopoly environment, since business operations require infrastructure, the specific nature of which does not allow the presence of several entities. Consequently, abuse of a dominant position often occurs. One of its forms is to **impose unfair prices** on service consumers. In its judgements UOKiK repeatedly challenged this type of conduct. This was also the case with the Water Supply and Sewerage Company (Zakład Wodociągów i Usług Kanalizacyjnych), which in the municipality of Białe Błota is the only entity conducting activities in the field of water supply and sewerage. In 2009-2016, the entrepreneur charged applicants for connection to the water supply or sewerage network with the cost of performing specific connection-related activities. However, these charges were not included in the applicable tariff. Moreover, charging the costs of connecting to the network to consumers is not, in the Authority's opinion, legally justified. It was only at the end of the proceedings that the company discontinued from the illicit practice, for which it was fined PLN 13 662⁹². The judgement is final.

There also emerge new types of practices challenged by the Authority in the water supply and sewerage services market. In 2016, UOKiK initiated an investigation concerning the installation of additional devices for metering "irretrievably consumed water" (e.g. irrigation water). The case concerned

⁹² Decision [RBG-11/2016](#).



For many years, UOKiK has conducted numerous proceedings in the water supply and sewerage services market, yet the scale of irregularities is still large. Therefore, it was decided to undertake educational activities in the form of a publication “[Water supply and sewerage guide](#)”, which was sent out to water supply companies and local governments across Poland. The guide was based on the experiences sourced from UOKiK’s past judgements. Among the issues discussed, the often-considered problematic cases related to the construction of networks/grids and connection of consumers are on the top of the agenda. In UOKiK’s opinion, educating the entities operating in this market should result in a reduction in the number of irregularities in the years to come. In 2017, the guide was awarded a prize [in the contest of](#) the International Competition Network and the World Bank for the best educational and information project on protection of competition, in the category of “Implementing advocacy strategies at multiple levels – regional, national, subnational/economy-wide and sector-specific”). It is the second award for UOKiK in this competition. The previous one was awarded for the preparation and promotion of [a guide](#) for cemetery administrators and funeral undertakings.

In 2016, the Authority also prepared a draft regulation on the water supply and sewerage services market, which postulated the establishment of a regulatory body in this area. More information on the proposed solution is provided in the section on [legislative work](#).

the Water Supply and Sewerage Company in Jarocin and the Water Supply Company in Śrem. The companies requested residents to pay for the installation of a water meter adapted to the remote (radio) reading system. The Authority does not contest the right to introduce a remote water meter reading system or to charge for additional metering devices. The objections, however, were raised by the fact that the entrepreneur made the possibility to account for irretrievably consumed water in service settlements dependent on the installation of a water meter for remote reading. In this way, consumers were prevented from using cheaper devices with traditional read-out. The Authority called on the two companies to change this practice. The calls pointed to the fact that applicable regulations did not specify what features an additional water meter should have. Therefore, it can be any metering device that has been legally certified and adapted to the water supply system. It is the consumer who should decide. The entrepreneurs committed to discontinue the practices challenged by UOKiK.

Abuse of a dominant position may also involve **making the contract conditional upon the acceptance or performance by another party of another service/covenant**, unrelated to the subject matter of the contract. This type of infringement was dealt with in the proceedings against Tauron sp. z o.o. The case was initiated in 2015 following a notification submitted by 8 entrepreneurs conducting business activity in the form of small hydroelectric power plants in four provinces: Małopolskie,

Śląskie, Dolnośląskie and Opolskie. The generated energy was purchased by Tauron. In these region, the company was a monopolist in the market for the purchase of electricity produced from renewable energy sources. Tauron made the purchase of energy dependent on the provision of an additional covenant, i.e. a clause in the contracts with the entrepreneurs to set out the charges for trade balancing service. It consists in accounting for the difference in the amount of electricity that has been collected by the final customer in relation to the amount of electricity previously reported in the sales contract. This covenant was unrelated to the subject matter of the contract and was therefore challenged by UOKiK. During the proceedings, Tauron cooperated with the Authority and acknowledged the merits of the charges. The Company committed to discontinue the practices challenged by UOKiK and to offer the partners an annex to the contracts for the sale of energy so that they did not include provisions making them subject to clauses on the settlement of charges for trade balancing service. Tauron finally appealed against the decision⁹³. The changes claimed by the company concerned only a part of the justification and were intended to eliminate doubts as to the company's status in its operations in the trade balancing market. At the same time, the substance of the decision and its justification were not challenged in the appeal. In view of this, UOKiK accepted the position presented by the company. The acceptance of Tauron's position pre-empted the need for court proceedings. In 2016, UOKiK issued a decision⁹⁴ introducing changes to the justification of the existing decision.

Competition-restricting practices may also consist in **limiting production, sale or technological progress to the detriment of contracting parties or consumers**. For this type of activities UOKiK fined in 2016 Radzyń Podlaski

Municipality⁹⁵. The charges concerned the abuse of a dominant position in the local market of public transport stops in Radzyń Podlaski. The proceeding was initiated following a notification from one of the carriers. Within the city boundaries, the municipality was the sole owner and manager of bus stops located at public roads. UOKiK confirmed that the municipality made arbitrary decisions to refuse the right to use the bus stop infrastructure. According to the law, access to public transport stops may be limited only in certain cases, such as a limited capacity of these stops or a threat to the organisation or safety of road traffic. The evidence gathered showed that there were no objective reasons for the existence of such circumstances. The fine imposed amounted to PLN 33 k. The municipality appealed against the decision issued to SOKiK.

5.2. Leniency and leniency plus programme

An entrepreneur who has entered into an anti-competitive agreement may seek a full exemption from a fine or its reduction if it decides to cooperate with UOKiK. In addition to admitting to participation in the agreement, the entrepreneur must provide information and evidence indicating the existence of an illicit practice⁹⁶.

In 2015, an additional solution was introduced for collusion participants, i.e. leniency plus programme⁹⁷. With this solution, the entrepreneur who files the second or a subsequent application may receive an additional 30% reduction of the fine, if it informs the Authority of another collusion in which it was also a participant. In the other case, it will have the status of the first applicant and will avoid fines.

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

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of applications	0	2	3	6	3	6	8	2	16	5	10	2	3 (including 1 leniency plus)

⁹³ Decision [RWR-9/2016](#).

⁹⁴ Decision [RWR-11/2016](#).

⁹⁵ Decision [RLU-8/2016](#).

⁹⁶ Detailed information can be found on UOKiK's website: http://uokik.gov.pl/program_lagodzenia_kar2.php.

⁹⁷ Entry into force of the amended Act on Competition and Consumer Protection, which introduced leniency plus programme.

5.3. Application of EU competition law

The ban on competition-restricting practices results from the provisions of the Treaty on the Functioning of the European Union (TFEU). When an entrepreneur's activity affects trade between EU Member States, EU regulations impose the obligation on the authorities and courts of the Member States to apply the Treaty directly (Articles 101-102 TFEU) in parallel with the provisions of national competition law. In 2016, UOKiK conducted 1 proceeding in which it applied in parallel Polish and EU regulations, and closed 1 proceeding in this respect.

Entrepreneurs can take advantage of **pre-notification meetings** to clarify potential doubts and possible objections to the proposed concentration. This allows them to fine-tune the details of the transaction in such a way that it does not raise UOKiK's objections.

After the proceedings UOKiK may:

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

6. Control of concentrations

Antitrust regulators control the concentration of entrepreneurs to eliminate the risk of an emerging entity with a market power threatening or eliminating competition. UOKiK also controls the largest transactions that have or may have an impact on competition in the Polish market.

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

In 2016, **252** proceedings were conducted, of which 225 were new cases initiated in that year. A total of **215⁹⁸** cases concerning the control of concentrations were closed. In 196 cases decisions were issued, while in the other cases applications were either returned to entrepreneurs (due to formal deficiencies, among others) or withdrawn (due to UOKiK's objections to concentration, among others).

Failure to provide UOKiK with information in the course of a proceeding in a concentration case, or effecting a concentration without the consent of the Authority is punishable by fines. Such situations are rare, and no fines were imposed in this regard in 2016.

UOKiK's assessment of concentrations takes into account their economic consequences, and therefore **economic analysis** is of great importance. In particular, deciding problematic cases, i.e. those that result in a significant increase in market concentration, requires an analysis that takes into account the multifaceted nature of the relationships between market actors, the dynamics of the competitive environment and the role of market entry barriers.

⁹⁸ This figure also includes proceedings initiated before 2016.

Table 10. Concentration control proceedings and types of decisions in 2014-2016

Concentration control cases	Number of cases		
	2014	2015	2016
- conducted	224	262	225
- closed	190	235	215
Types of decisions:			
- consent to concentration	169	218	194
- consent to concentration, as a result of which competition in the market will be significantly reduced – waiver of the ban on concentration (Article 20 (2) of the ACCP)	0	0	0
- conditional consent	4	1	2
- prohibition	0	0	0
- decision discontinuing the concentration control proceedings	0	0	0
- resolution discontinuing the concentration control proceedings	4	5	4
- notification of intention to concentrate returned	12	11	15
- decision imposing a fine for failure to notify intention to concentrate	1	0	0
- decision imposing a fine for undertaking's failure to provide information during the concentration proceedings	0	0	0
- notification withdrawn	4	5	4

The analysis of applications in concentration cases follows a two-step procedure⁹⁹, where simple cases are considered within one month and for more complex cases this time limit is extended by four months. In 2016, 7¹⁰⁰ proceedings were closed, out of 10 that gone to the second step. The two-step approach was introduced in 2015. The changed time limits for considering simple cases resulted in shortening the time of the proceedings that ended with a decision. In 2015, it was 57 days, while in 2015 and 2016 it was 34 and 38 days, respectively. It should be noted that in 2016 97% of the decision concerned the first step cases considered within 30 days.

Apart from examining cases pertaining to the Polish market, UOKiK also issues opinions on the proceedings conducted by the European Commission with regard to the impact of concentrations on the Polish market. In 2016, there were **360** cases in this regard.

Examples of concentration control activities

In 2016, as in the previous year, the decision in concentration cases most often concerned the real estate market (including property development). Below is a summary of selected decisions.

⁹⁹ Due to the entry into force of the amended Act on Competition and Consumer Protection on 18 January 2015.

¹⁰⁰ Indicates the number of proceedings in which a decision was issued.

Table 11. Examples of UOKiK's decisions in concentration control cases in selected sectors in 2016.

Sector	Number of cases	Examples of decisions
real estate (including property development market)	20	<ul style="list-style-type: none"> consent to the establishment of a new enterprise in Luxembourg by PG Europe in Luxembourg and CSJV CP Logistic Europe in Luxembourg (DKK-47/2016); consent to the establishment of a new enterprise Kwadrat Postępu sp. z o.o. in Warsaw by Eiffage Polska Nieruchomości sp. z o.o. in Warsaw and Avestus Real Estate sp. z o.o. in Warsaw (DKK-78/2016); consent to the acquisition of control of CA Immobilien Anlagen AG in Austria by Immofinanz AG in Austria (DKK-110/2016);
food sector	18	<ul style="list-style-type: none"> consent to the acquisition of part of the property of Skłodowscy Tykocin sp. z o.o. in Tykocin by ABP Poland sp. z o.o. in Pniewy (DKK-44/2016); consent to the merger of Spółdzielnia Mleczarska Mlekpól in Grajewo and Spółdzielnia Mleczarska Sudowia in Suwałki (DKK-77/2016); consent to the acquisition of control of Zakłady Mięsne Unimięś sp. z o.o. in Chrzanów by Zakłady Mięsne Peklimar S.A. in Umienino-Łubki (DKK-103/2016); conditional consent to the acquisition of control of Eko Holding S.A. in Nowa Wieś Wrocławska by Eurocash S.A. in Komorniki (DKK-191/2016).
automotive sector	15	<ul style="list-style-type: none"> consent to the acquisition of control of Affinia Group Holdings, Inc. in USA by Mann+ Hummel Inc. in USA (DKK-66/2016); consent to the establishment of a new enterprise Electro Mobility Poland SA in Warsaw by PGE Polska Grupa Energetyczna SA in Warsaw, Energa SA in Gdańsk, Enea SA in Poznań and Tauron Polska Energia SA in Katowice (DKK-133/2016); consent to the acquisition of part of the property of Fota-Groblewski sp. z o.o. in Sopot by Bohemia Motors sp. z o.o. in Falenty (DKK-151/2016).
construction sector	14	<ul style="list-style-type: none"> consent to the establishment of a new enterprise TR Inżynieria i Budownictwo in Warsaw by Budimex S.A. in Warsaw and Technics Reunidas S.A. in Spain (DKK-30/2016); consent to the establishment of a new enterprise Poznań Office Center I sp. z o.o. in Warsaw by PKP SA in Warsaw and Trios Dutch Holdings BV in the Netherlands (DKK-50/2016); consent to the acquisition of control of Przedsiębiorstwo Budowy Dróg Drogopol-ZW sp. z o.o. in Katowice by Colas Polska sp. z o.o. in Pałędzie (DKK-137/2016);
pharmaceutical sector	10	<ul style="list-style-type: none"> consent to the acquisition of part of the property of Takeda GmbH in Germany by Astra Zeneca in Switzerland (DKK-51/2016); consent to the acquisition of control of Medea Holding sp. z o.o. in Warsaw by BRL Center-Polska sp. z o.o. in Wrocław (DKK-13/2016); consent to the acquisition of control of Intra sp. z o.o. in Warsaw by Neuca S.A. in Toruń (DKK-170/2016); consent to the acquisition of control of Galenica Nova sp. z o.o. in Poznań by Medicare sp. z o.o. in Mysłowice (DKK-156/2016).

Examples of 1st-step proceedings

Clearance of concentrations in the energy market

In 2016, UOKiK consented to the establishment of a joint venture by the four largest Polish energy companies: Enea, Energa, PGE Polska Grupa Energetyczna and Tauron Polska Energia. ElectroMobility was created as a result of the transaction; the company's mission is to create the basis for the development of electromobility sector in Poland, thus influencing the development of the electric vehicle market. The proceeding showed that competition would not be distorted as the scopes of activities of the participants in the concentration and of the joint venture do not overlap¹⁰¹.

UOKiK also consented to the establishment of an enterprise responsible for setting up and maintaining the Central Information Exchange System. The system is to be a nation-wide platform to gather electricity distribution system operators, sellers and entities responsible for trade balancing. The system will make it easier for consumers to change their electricity supplier and to handle complaints. The project is supported by the Energy Regulatory Office. The participants of the concentration are: Enea Operator, Energa Operator, PGE Dystrybucja, RWE Stoen Operator, Tauron Dystrybucja.¹⁰²

Examples of 2nd-step proceedings

Clearance of concentrations in the ATM market

The application filed in February 2016 concerned Diebold's acquisition of Wincor Nixdorf. Both traders operate in the ATM and technical service market for the financial sector. UOKiK decided that it would be necessary to carry out market research in order to verify the information provided by the entities. In the course of the study carried out within the second-step proceedings, data were collected from 49 entrepreneurs, competitors and consumers of their products and services, including banks. The analyses showed that the combined market share of the entrepreneurs in some markets exceeds the statutory threshold of 40%, but no restriction of competition was expected. In assessing the transaction, the Authority took into account, in particular,

the specificities of the analysed markets where consumers have significant market power balancing the influence of the suppliers, selected mainly through tenders. Their market share depends on awarded tender contracts and can be subject to high periodic fluctuations. The presence of a strong competitor, the NCR Group, operating in 120 countries and offering a similar range of services and goods is also important. In view of these facts, UOKiK consented to the concentration¹⁰³.

Clearance of concentrations in the pharmaceutical market

The proceedings concerned the acquisition of Intra by Neuca. Both companies operate in the wholesale of pharmaceuticals to pharmacies and hospitals. The market study (survey of competitors) conducted in the second-step proceeding showed that the concentration could result in a restriction of competition in the local wholesale market of medicines for pharmacies, covering the area within the radius of up to 110 kilometres from the taken-over wholesaler in Warsaw. In view of these facts, UOKiK raised objections to the concentration. Following the clarifications obtained from the entrepreneurs and an analysis of the market, consent to the concentration was ultimately granted.¹⁰⁴

Conditional clearance in the consumer goods market

The decision issued by UOKiK¹⁰⁵ concerned the acquisition of control of Eko Holding by Eurocash. Eurocash operates in the wholesale and retail sale of everyday consumer goods, as well as in the organisation of franchise and partner chains, including ABC Sklepy po Sądziejku, Delikatesy Centrum, Drogerie Koliber. Eko Holding is involved mainly in retail sales of everyday consumer goods. UOKiK conducted two market studies which covered nearly 60 entrepreneurs, retailers operating in local markets and operators of franchise and partner chains. The collected evidence showed that the concentration could lead to a restriction of competition in three local retail markets for the sale of everyday consumer goods. Therefore, the Authority raised objections to the concentration towards Eurocash. After analysing the response of the company, UOKiK decided that a conditional decision could be issued in that case. Eurocash is obliged to sell Eko Holding stores in three specific

¹⁰¹ Decision [DKK-133/2016](#).

¹⁰² Decision [DKK-85/2016](#).

¹⁰³ Decision [DKK-114/2016](#).

¹⁰⁴ Decision [DDK-170/2016](#).

¹⁰⁵ Decision [DDK-91/2016](#).

locations and their purchaser may not belong to the Eurocash Group or be associated with it under a franchise agreement. The new owner must also guarantee the continuation of the current activity of the stores and have the organisational and economic resources to operate the business. The purchase will be subject to the Authority's approval. The fulfilment of the imposed condition will prevent a restriction of competition by the concentration.

UOKiK's objections and withdrawn applications in the energy market

At the end of 2015 UOKiK received an application for consent to the establishment of a joint venture under the name Nord Stream 2 AG. The transaction was notified by 6 enterprises: PAO Gazprom, E.ON Global Commodities SE, ENGIE SA, OMV Nord Stream II Holding AG, Shell Exploration and Production, Wintershall Nederland B.V. The joint venture was anticipated to cover the construction of two parallel submarine gas pipelines, running from the Russian coast of the Baltic Sea to Greifswald, Germany. UOKiK decided to extend the proceeding and carry out extensive market

research, in which the Authority asked the entities operating in the natural gas market in Poland to evaluate the planned concentration. The Energy Regulatory Office was also asked for its opinion on the transaction. The research confirmed UOKiK's doubts, as the planned concentration could lead to a restriction of competition. Gazprom has a dominant position in gas supplies to Poland, and the transaction could lead to further strengthening of the negotiating power of the company towards Polish customers. In view of UOKiK's objections the application was withdrawn.

7. Court case law in competition protection cases

Traders may file appeals against UOKiK's decisions and complaints against the Authority's resolutions to the Court of Competition and Consumer Protection (SOKiK)¹⁰⁶ in Warsaw. The Court's judgements may be appealed against to the Court of Appeal in Warsaw (SA in Warsaw). At the next stage, it is possible to file a cassation complaint with the Supreme Court (SN). As the statistics show, in most cases UOKiK's decisions in the field of competition protection are upheld by SOKiK.

Table 12. Statistics for judgements in competition protection cases in 2014-2016¹⁰⁷

	SOKiK			SA in Warsaw			SN		
	2014	2015	2016	2014	2015	2016	2014	2015	2016
Judgements in competition cases in 2014-2016, total including in cases of:	64	41	28	26	51	33	3	3	2
- vertical agreements	16	8	3	14	25	15	0	1	1
- horizontal agreements	10	15	13	2	6	4	0	0	0
- abuse of a dominant position	35	17	11	10	19	12	2	2	1
- concentration control	3	1	1	0	1	2	1	0	0

¹⁰⁶ For decisions in cases of general product safety, a trader may apply for reconsideration of a case, and then file a complaint with the Provincial Administrative Court in Warsaw (WSA).

¹⁰⁷ Information on all the appeals against UOKiK's decisions are available from the decision database at: http://www.uokik.gov.pl/decyzje_prezesa_uokik3.php.

Table 13. Conclusions of SOKiK’s judgements in competition cases in 2014-2016

	2014		2015		2016	
	Number	%	Number	%	Number	%
UOKiK’s decision revoked	6	9	7	17	2	7
UOKiK’s decision changed	17	27	8	20	1	4
Trader’s appeal dismissed	41	64	26	63	25	89

Examples of court judgements

SOKiK’s judgement of 22 January on the appeal of PZL-Świdnik¹⁰⁸

The judgement refers to the proceedings completed in 2014. UOKiK decided¹⁰⁹ that Wytwórnia Sprzętu Komunikacyjnego “PZL-Świdnik” abused its dominant position by refusing to sell spare parts for the Mi-2 helicopter, of which it was the sole manufacturer, to other enterprises. A fine of more than PLN 320 k was imposed on the company for anti-competitive practices. WKS PZL Świdnik appealed against this decision but SOKiK upheld UOKiK’s position regarding the application of the illicit practice by the trader and the amount of the fine. The trader did not appeal against SOKiK’s judgement.

SOKiK’s judgement of 7 March on the appeal of BP Europa¹¹⁰

In 2014, UOKiK imposed a fine on BP Europa in the amount of PLN 20 k for effecting a concentration without the Authority’s consent¹¹¹. The case concerned a long-term lease of a fuel station, a store and a restaurant from Jackiewicz i Wspólnicy partnership. In its decision SOKiK dismissed the entrepreneur’s appeal. The Court upheld UOKiK’s position that the long-term lease could be considered a form of concentration. The justification indicated that the intention to acquire part of the property or other property rights of another entrepreneur was subject to the requirement to notify the Authority. Whether such rights exist at the time of acquisition or are created as a result of the legal transaction does not matter. BP Europa filed an appeal with SA.

¹⁰⁸ File ref. [XVII Ama 24/15](#).

¹⁰⁹ Decision [RLU-27/2014](#).

¹¹⁰ File ref. [XVII AmA 14/15](#).

¹¹¹ Decision [DDK-173/2014](#).

SOKiK’s judgement of 22 November on the appeal of Arriva Bus Transport Polska¹¹²

SOKiK’s judgement concerned the appeal of Arriva Bus Transport Polska against UOKiK’s decision¹¹³ of December 2013. UOKiK imposed a fine of more than PLN 76 k on the company for the abuse of a dominant position in the local passenger transport markets. The case concerned the practices used by Arriva in 2011 in connection with the entry of another carrier, which offered more attractive prices on the same routes in Kętrzyn District, Warmińsko-Mazurskie Province. Arriva, by reducing its prices below the operating cost and changing the timetables, eliminated its competitor from the market. It then raised ticket prices, which further proved the anti-competitive nature of the practice. SOKiK dismissed the appeal of the company, which did not appeal further.

SA’s judgement of 13 July on the appeal of Adamek Bud-Chem Plus, Chemik HB¹¹⁴

SA’s judgement concerns Adamek Bud-Chem Plus and Chemik HB companies. The entrepreneurs belonged to a group of 55 distributors of Fabryka Farb i Lakierów Śnieżka, charged by UOKiK with price fixing¹¹⁵. Both SOKiK¹¹⁶ and SA upheld the position of the Authority in 2009 against both companies. Analogous judgements concerned the other participants of the agreement, with the exception of the Polskie Składy Budowlane Group. In view of the specificity of its business the courts decided that no price fixing could be confirmed. The Authority did not file an appeal.¹¹⁷

¹¹² File ref. [XVII AmA 87/14](#).

¹¹³ Decision [RBG-51/2013](#).

¹¹⁴ File ref. [VI ACa 1172/14](#).

¹¹⁵ Decision [RKT-43/2009](#).

¹¹⁶ File ref. [XVII AmA 134/10](#).

¹¹⁷ File ref. [XVII AmA 121/10, VI ACa 1096/14; case law is described in Report on activities 2015](#).

SN's judgement of 21 April on the cessation complaint filed by UOKiK¹¹⁸

In 2011, UOKiK imposed a fine of more than PLN 2 M on Inco-Veritas¹¹⁹ for failure to cooperate in the course of an investigation. The case concerned an attempt to remove from a computer a document which evidenced price fixing for Ludwik and Lucek washing-up liquids and Buwi shoe polish. Neither SOKiK¹²⁰ nor SA¹²¹ upheld the Authority's position, arguing that the document file was not permanently deleted but only moved to the "trash" folder, which made it possible to re-open/re-read it. In addition, the inspectors received a paper version of the document. UOKiK filed a cassation complaint in that case and the Supreme Court found it to be justified. The Court decided that it was not relevant in that case whether the file had been permanently deleted or only moved to another folder. A situation in which the antitrust authority was not granted access to data was to be considered a failure to cooperate, i.e. a default on the trader's duty. Handing over a paper-form document did not matter as it was not possible to verify that it was identical to the electronic version. SN referred the case to SOKiK for reconsideration.

8. State aid

EU law only permits state aid by way of exception, so as not to distort free competition within the European Union market. In view of the principle of equality in competition, state aid projects or changes to the terms and conditions of use of such aid must be notified to the European Commission (EC). An exception is aid granted under so called block exemptions¹²². The notification requirement does not apply to *de minimis* aid, i.e. aid not exceeding EUR 200 k gross during three calendar years (for the sector of road transport of goods EUR 100 k), either. State aid is not only a transfer of funds, but also of any other form of state resources.

The EC is the only institution authorised to decide on the compatibility with the internal market of state aid granted to businesses in the EU. In contrast, UOKiK's main task is to

¹¹⁸ File ref. [III SK 23/15](#).

¹¹⁹ Decision [DOK-9/2011](#).

¹²⁰ File ref. [XVII AmA 32/12](#).

¹²¹ File ref. [VI AcA 446/14](#).

¹²² The European Commission may issue regulations under which certain aid categories are a priori considered as compatible with the common market, and as such do not require prior notification to or a consent from the Commission. These are projects covered by block exemptions and *de minimis* aid. More information available at http://www.uokik.gov.pl/wylaczenia_grupowe_i_pomoc_de_minimis2.php.



perform the initial assessment of cases of individual aid and aid programmes in this regard. In 2016, UOKiK issued **35** opinions, of which **11** on aid schemes and **24** on individual aid. Although the Authority's position is not binding, in practice it is often taken into account. In the process of notification of state aid, UOKiK notifies the European Commission of an intention to grant aid.

The tasks of the Authority also include state aid monitoring in Poland. On the basis of the reports from aid grantors, UOKiK prepares its annual [report on state aid](#)¹²³ for the preceding year. The report is presented to the Council of Ministers and then adopted by the Sejm.

On 1 July 2016, a publicly available (without the need to log in) application [SUDOP](#) was launched (**Electronic State Aid Information System**), which is an important source of information on state aid and *de minimis* aid, aid programmes, own aid and aid obtained by other enterprises. The application is based on the data provided by aid grantors in the form of reports submitted to UOKiK via the SHRIMP application.

¹²³ "Report on state aid in Poland, granted to enterprises in 2015" and "Report on *de minimis* aid granted to enterprises in 2015" were adopted by the Council of Ministers on 7 December 2016.

Table 14. State aid data for 2016

Number of applications for interpretation	514
Number of draft government documents (normative acts, strategies, programmes, information, reports) analysed for recognition of support as state aid	535
Number of projects notified to the EC via the Authority, including:	11
– individual aid projects	1
– aid scheme projects	10
Number of positive decisions issued by the EC for projects	13
Number of projects withdrawn	1
Number of projects analysed by the EC under preliminary investigation	37
Number of projects for which formal investigation was carried out ¹²⁴	2
Number of projects submitted to the EC via UOKiK under block exemptions, including:	33
– aid scheme projects	15
– individual aid projects	18

In 2016, UOKiK worked closely with the Ministry of Energy and the Ministry of Development. UOKiK supported these ministries in the development of aid schemes, enabling state aid under block exemptions, among others, for the construction of energy and heating infrastructure, as well as for projects supporting energy efficiency. The Authority also participated in various types of working meetings, also with representatives of the energy sector. The discussions were to clarify doubts related to the state aid regulations, touching on, for example, the problem of divergent definitions of the same concepts under national and EU law. The proposed aid schemes for energy-intensive enterprises were also evaluated.

Examples of projects evaluated and notified by UOKiK

The scope of the matters handled in 2016 covered various economic sectors, including banking, media and shipbuilding.

Retail sales tax

In September 2016, the European Commission initiated a formal proceeding concerning turnover tax on retail sales and issued an injunction to suspend the use of this type of measure. The EC decided that a progressive tax scale could constitute illicit state aid for SMEs (a lower average tax rate). The Polish authorities do not agree with the position of the EC because they believe that the incremental progression is not discriminatory to taxpayers. In November 2016, the Polish authorities brought an action with CJEU for annulment of the EC decision in this case (decision pending). On 30 June 2017, the European Commission issued a decision closing the formal investigation initiated in 2016, which confirmed that progressive taxation of retail sales was an illicit state aid for businesses with a lower turnover. The Polish authorities will appeal against this decision to CJEU as well.

¹²⁴ The statistics also include applications submitted in the previous years, which the European Commission assessed in 2016.

Draft media acts

On 19 May 2016, the President of UOKiK issued an opinion on the draft Act on the National Media, draft Act on Audiovisual Contribution and draft Act “Law introducing the Act on the National Media and the Act on Audiovisual Contribution”.

The draft Acts provided for the transformation of the public media sector, including fundamental institutional changes (establishment of the National Media Council, Social Programming Boards and National Media Fund), changes in the legal form of public broadcasters (transformation of radio and television broadcasting units as well as the Polish Press Agency (PAP), being State Treasury joint-stock companies, into the National Media Institutions, which upon the transformation would become state legal persons), changes in the definition of the public mission and new

sources of its financing (replacing the revenue from the subscription with receipts from the audiovisual contribution imposed on end electricity clients), as well as a different system of supervision of whether the public mission is implemented than the existing one. Due to the fact that the changes were not of strictly formal or administrative nature, but were supposed to fundamentally affect the nature of the original system, which constituted the “existing aid”, according to UOKiK, they should have been qualified as “new aid” within the meaning of Article 1 (c) of the Council Regulation (EU) 2015/1589¹²⁵. Consequently, the obligation to notify the European Commission applied to the draft Acts in question pursuant to Article 108.3 of TFEU, in the manner set out in Article 20 of the Act on proceedings in public aid cases of 30 April 2004¹²⁶. However, the Commission was not notified due to the fact that finally the regulations laying down the mechanism for financing public media were not sent for further work at the parliament.

Table 15. Examples of projects evaluated or notified in 2016.

Draft aid scheme

included in the Regulation of the Minister of Development on the granting of regional investment aid to SMEs for investment in shipbuilding under ROP 2014-2020.

Draft amendment

to the aid scheme for bodies employing persons deprived of liberty, as included in the draft Act amending the Act on the employment of persons deprived of liberty.

Draft aid scheme

“Coercive restructuring programme for cooperative banks and small commercial banks”.

Draft individual aid

project for Olsztyn-Szymany Airport.

Draft Act on the

national media, draft Act on audiovisual contribution and draft Act “Law introducing the Act on the national media and the Act on audiovisual contribution”.

¹²⁵ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down the detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248 of 24.09.2015).

¹²⁶ Journal of Laws of 2016, item 1808, as amended.

III. LEGISLATIVE WORK

Within its area of competence, UOKiK develops legislative acts concerning competition and consumer protection, and participates in legislative work carried out on the initiative of other institutions in other areas of competence. In 2016, UOKiK analysed a total of **1 795** draft acts and positions to draft acts of the Sejm, with a view to issuing an opinion on the potential impact on competition and the situation of consumers.

9. National legislation

9.1. Legislative work in UOKiK's area of competence

Act of 23 September 2016 on Alternative Consumer Dispute Resolution¹²⁷

In 2016, work on the Act implementing the EU legislative package on alternative resolution of consumer disputes into

the Polish legal system was completed.¹²⁸ The basic aim of the regulation is to create a uniform system in all Member States, covering all disputes between the consumer and the trader, arising from contracts for the sale of goods or services, including contracts concluded via the Internet and cross-border contracts. The system will provide consumers with access to independent, impartial, transparent, effective and fast ways to resolve disputable issues. The implementation of the directive required the development of a comprehensive model of the consumer dispute resolution system in Poland, while taking into account the actors involved in this area. Therefore, the work carried out in 2013-2016 required extensive public and inter-ministerial consultations¹²⁹. As a consequence of the adopted law, changes were introduced in the regulations defining

¹²⁸ The legislative package published on 18 June 2013 includes Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR, (OJ L 165 of 18.06.2013, p. 63.) and Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR, (OJ L 165 of 18.06.2013, p. 1.).

¹²⁹ In 2013-2014, UOKiK conducted extensive social and inter-ministerial consultations aimed at developing optimal model of ADR. The result was the development of assumptions for the draft act, which were adopted by the Council of Ministers in March 2015. UOKiK then performed legislative work, including the stage of governmental consultations and parliamentary work.

¹²⁷ The Act entered into force on 10 January 2017 (Journal of Laws of 2016, item 1823).



- ▶ easy access to ADR proceedings for consumers and entrepreneurs (online and offline, irrespective of their place of business or place of residence);
- ▶ proceedings for consumers free of charge or for a negligible amount of fees;
- ▶ closure of a case within 90 calendar days of receipt by the competent entity of a complete complaint.

Draft Act amending the Act on collective water supply and collective sewerage services and certain other acts

The draft Act aims at eliminating problems related to the functioning of the market for collective water supply services and collective sewerage services. In order to counteract the above mentioned problems and to secure the interests of consumers of the services, a supervision authority would be appointed in this area. The draft Act envisages entrusting this function to Director of the regional water management board of the Polish Water State Water Management Body (to be appointed under the draft Water Law Act). The new institution would obtain certain competences in the field of collective water supply and collective sewerage services currently vesting in municipality mayors and councils. The design of the competences of the supervision authority was modelled based on the competences of President of the Energy Regulatory Authority in relation to the heat energy market. The draft was submitted to the Ministry of Infrastructure and the Ministry of the Environment, as appropriate, for further legislative work.

the competences of state institutions, in the structures of which or at which the activities of entities existing within the system were taken into account. The amendments also covered the Code of Civil Procedure as regards arbitration, the Act on Competition and Consumer Protection and the Consumer Rights Act. The adopted model assumes the existence of entities entitled to resolve consumer disputes out of the courts, according to the sectoral division of the market, including:

- ▶ non-public entities created by entrepreneurs in a sector (e.g. aviation) or consumer organisations;
- ▶ public entities, operating at or in the structures of public bodies, e.g. Polish Financial Supervision Authority, Office of Electronic Communications, Energy Regulatory Authority, Financial Ombudsman.

The Trade Inspection Authority is a horizontal entity in the system. The scope of IH's activity covers matters for which an appropriate sectoral entity has not been established, e.g. sales of products, tourist services, property development. Any entity that intends to conduct out-of-court resolution of consumer disputes is obliged to obtain an entry in the appropriate [register](#) kept by the Authority, which acts as the competent body. The key assumptions of the ADR system include:

Regulation of the Prime Minister of 29 March 2016 amending Regulation on local and substantive competence of UOKiK's Branch Offices¹³⁰

The need to amend the current Regulation of the Prime Minister was mainly due to changes in the Act on Competition and Consumer Protection¹³¹. These included, among others, an extension of the competences of the Authority to conduct new types of proceedings, including proceedings concerning the recognition of prohibited clauses in standard contracts, issuing reasoned opinion in a case, and the possibility to call

¹³⁰ The Regulation entered into force on 17 April 2016 (Journal of Laws of 2016, item 475).

¹³¹ Act of 5 August 2015 amending the Act on Competition and Consumer Protection and certain other acts (Journal of Laws of 2015, item 1634).

on entrepreneurs in competition and consumer protection cases without initiating proceedings.

Regulation of the Council of Ministers of 7 December 2016 amending the Regulation on the detailed method of calculating the value of various forms of state aid¹³²

The amendment introduces the methods of calculating the value of state aid, which will allow to reflect as much as possible the benefit to the entrepreneur and provide a uniform system for determining the value of aid by grantors. The most important changes concern the following:

- ▶ modification of the formulas for calculating the value of aid granted in the form of recapitalisation, preferential loan or credit, tax relief;
- ▶ determination of the method for calculating aid in the form of suspension of debt recovery action for a definite period or exemption from taxation;
- ▶ clarification of the rules concerning the discounting of aid effected in tranches/over time;
- ▶ determination of the rules for calculating the value of state aid in the case of relief from the payment of property tax.

Regulation of the Council of Ministers of 19 December 2016 amending the Regulation on *de minimis* aid certificates and *de minimis* aid in agriculture or fisheries¹³³

The amendment introduced the possibility of issuing certificates in the electronic form and delivering them by electronic means. In such cases, the certificate will not have to bear the seal of the aid grantor.

¹³²The Regulation entered into force on 1 January 2017 (Journal of Laws of 2016, item 2093).

¹³³The Regulation entered into force on 19 January 2017 (Journal of Laws of 2017, item 31).

Regulation of the Council of Ministers amending the Regulation of 23 December 2014 on notification of the intention to concentrate¹³⁴

The amendment proposed by UOKiK concerned only the amount of fees payable on the concentration applications filed by entrepreneurs. The amended regulation raises the fees in this area from the current PLN 5 k to PLN 15 k. The changes resulted from the need to adjust the rates to the costs incurred by the Authority in considering such cases.

Regulation of the Council of Ministers of 12 August 2016 on the register of non-conforming or hazardous goods¹³⁵

The Regulation governs in detail the manner in which the register of non-conforming or hazardous products is kept and the scope of data entered into it, in connection with the entry into force of the Act on Conformity Assessment and Market Surveillance¹³⁶.

Moreover, in 2016, work on Regulation of the Council of Ministers of 2 February 2016 amending the Regulation on the scope of information submitted by an entity applying for aid other than *de minimis* aid or *de minimis* aid in agriculture or fisheries¹³⁷ was completed.

9.2. Participation in legislative work performed on the initiative of other institutions

Act on Counteracting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products¹³⁸

The Act was drafted on the initiative of the Ministry of Agriculture and Rural Development, with the active involvement of UOKiK. The contractual advantage relates

¹³⁴The Regulation entered into force on 1 January 2017 (Journal of Laws of 2015, item 80).

¹³⁵The Regulation entered into force on 15 September 2016 (Journal of Laws of 2016, item 1374).

¹³⁶Act of 13 April 2016 on Conformity Assessment and Market Surveillance Systems (Journal of Laws of 2016, item 542, as amended).

¹³⁷Journal of Laws of 2016, item 238.

¹³⁸The Act was adopted by the Sejm on 15 December 2016 and signed by the President of the Republic of Poland. It will enter into force on 12 July 2017.



to the supplier's relationship with the buyer. It occurs when there is considerable disproportion between the two in terms of economic potential and, at the same time, the weaker party has insufficient opportunities to sell or buy agricultural or food products from other traders. The purpose of the Act is to eliminate unfair trade practices from the supply chain in relation to the stronger partners' use of their position. In particular, they may consist in:

- ▶ unreasonable termination of the contract or threatening the termination,
- ▶ arrangements whereby only one of the parties is entitled to terminate or withdraw from the contract,
- ▶ making the conclusion or continued existence of the contract dependent upon the acceptance or performance by one of the parties of another service/covenant unrelated to the contract,
- ▶ unreasonable extension of payment terms.

According to the Act, the Authority will be the competent authority in the case of practices involving unfair use of contractual advantage. A notification in such cases may be filed by an entrepreneur who has reasonable suspicions that such practices are applied to itself. The Authority will undertake intervention only in order to protect the public interest where the total turnover between the supplier and the recipient in any of the two years preceding the year of initiation of the proceedings is over PLN 50 k, and the turnover of the buyer or supplier applying the practice, in the year preceding the year of initiation of the proceedings exceeded PLN 100 M. As a result of the proceedings, UOKiK will be able to order the discontinuation of the illicit practice, as well as to accept a commitment from the entrepreneur to remove the illicit practices or to remedy their consequences. The Authority also has the power to impose on a trader a fine in the amount of up to 3% of the turnover realised in the year preceding the year in which the fine is imposed.

Act of 23 March 2017 on Mortgage Loans and on Supervision of Mortgage Loan Brokers and Agents¹³⁹

In 2015, UOKiK conducted work on the amendment to the consumer credit law, which would strengthen the consumer's position¹⁴⁰. By virtue of a decision of the Standing Committee of the Council of Ministers, UOKiK's draft was combined with a regulation developed by the Ministry of Finance concerning housing loans. The Ministry was the leading authority for this regulation. The proposed act adapts Polish law to EU directives¹⁴¹ and introduces a comprehensive regulation of real estate loans. The regulations aim to increase the comparability and transparency of the lenders' offerings and to strengthen the consumer's position in the mortgage loan market. UOKiK actively participated in the work on the draft Act. Most of UOKiK's postulates were implemented.

Since the beginning of work on the mortgage credit law, UOKiK called for the introduction of an authority for supervision of lenders into the Consumer Credit Act, along with the establishment of a register of such lenders. The existing regulations envisaged requirements after meeting of which the trader could operate business activity for providing consumer credit, but lacked institutionalised supervision of compliance with these requirements. In the light of the changes provided for in the draft, starting business activities in the field of consumer credit will be subject to registration in the register maintained by the PFSA, after fulfilment of statutory requirements (including, among others, clean criminal records for specified offences). The register will contribute to greater transparency in the consumer credit market. The PFSA will be in charge to supervise lenders. UOKiK was also responsible for clarifying

¹³⁹ Journal of Laws of 2017, item 819

¹⁴⁰ Detailed information: [Report on activities 2015](#), p. 45

¹⁴¹ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

consumer credit regulations in terms of compatibility with the EU Directive on Consumer Credit Agreements¹⁴².

As part of a comprehensive regulatory framework, the Authority also prepared an amendment to the regulations on advertising of consumer credit, which aims to increase visibility and understanding of mandatory information, including consumer credit costs and actual annual interest rates. Under the influence of the comments submitted by UOKiK, an analogous solution was provided for advertising of mortgage loans.

Act of 21 April 2017 on Claims for Compensation for Damages Caused by Infringement of Competition Law¹⁴³

The project was led by the Ministry of Justice. The new law adapts the Polish legislation to the EU directive¹⁴⁴ concerning claims for damages. The draft sets out the principles of liability for damage caused by infringement of competition law and regulates the issues of claiming redress in civil proceedings. Any person who has suffered a damage due to an infringement of competition law will be entitled to full remedy. The Act defines UOKiK's obligations in this regard, in particular:

- ▶ assisting the court in determining the amount of damage,
- ▶ preparation of a position on the proportionality (justification) of claims for disclosure of evidence in possession of the competition authority,
- ▶ preparation of documents containing evidence requested by the court.

UOKiK's remarks were aimed at clarification of the definitions used, the rules of claims for redress and of transfer of documents from the Authority's files, the manner in which assistance should be given to courts in estimating the amount of damage. UOKiK's comments were mostly taken into consideration.

¹⁴² Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

¹⁴³ Journal of Laws of 2017, item 1132.

¹⁴⁴ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

Draft Act amending the Act on Rail Transport and Certain other Acts¹⁴⁵

The amendment adapts the Polish law to EU regulations concerning rail transport¹⁴⁶. As a consequence, it is conducive to further opening of the market and liberalisation of standards in this area. UOKiK's objections were raised by a provision concerning a rail carrier having a dominant position. According to the proposed solution, it would be an entity which, in the last completed annual schedule of train travel, had the largest share in the achieved overall train-km/tonne-km values, taking into account the division of passengers and goods carriage. That approach to the dominant position would be incompatible with the applicable antitrust law, which provides for 40% market share, among others. UOKiK postulated that the provisions be adapted to the regulations adopted in the Act on Competition and Consumer Protection. In addition, the draft introduced new infrastructure funding rules (new types of infrastructure and rules of payment for its use). In this regard, UOKiK raised a remark pointing to the existence of state aid in the case of reliefs envisaged for carriers in the basic charge for access to railway infrastructure, while stressing the need to ensure compatibility of such aid with the internal market. UOKiK's comments were taken into consideration.

Draft Act on the National Housing Fund and the Transfer of Land Owned by the State Treasury for Residential Purposes¹⁴⁷

The draft assumes the use of State Treasury land to build accessible housing for rental, including the option for the tenant to gradually acquire ownership. The regulations provide for the establishment of the National Housing Fund (NFM), with control over the distributed real estate of the State Treasury. During the inter-ministerial consultations, UOKiK pointed out that the transfer of real estate and funds by public authorities to the Fund and the granting of subsidies from the state budget may constitute state aid if this institution conducts business activity within the meaning of the EU competition law. UOKiK also submitted comments

¹⁴⁵ Act of 16 November 2016 amending the Act on rail transport and certain other acts (Journal of Laws of 2016, item 1923).

¹⁴⁶ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area.

¹⁴⁷ Inter-ministerial consultations concerning the comments submitted to the draft, including UOKiK's remarks, did not end in 2016. Information on the current status of the document can be found on the website of the Government Legislative Centre at: <https://legislacja.rcl.gov.pl/projekt/12293159>.

on proposed legal solutions, which in the Authority's opinion could lead to lowering the level of protection of the rights vesting in buyers of residential premises and detached houses. The Authority pointed out the necessity to clarify the rules governing the costs of acquiring ownership rights by the tenant and the proceedings in case of bankruptcy of the operator (real estate manager). These rules should be known to the tenant before the contract with the operator. It will be possible to determine the extent to which UOKiK's remarks have been considered only at a later stage of work.

Act of 22 July 2016 amending the Energy Law Act and certain other acts¹⁴⁸

The purpose of the amendment was to structure the liquid fuel market system. The changes concern, among others, the rules for the granting and withdrawal of trade licences for liquid fuels, more stringent penalties for running business activity without or in violation of the licence. The Act also introduces changes in the system of fuel quality monitoring and control, extending the previous scope of tasks of the Trade Inspection Authority in this regard, and also imposing on UOKiK the obligation to publish lists of fuel traders.

In 2016, UOKiK issued opinions to a **series of draft legal acts whose introduction involved the adoption of the Act on Alternative Consumer Dispute Resolution**. The Authority submitted comments to the following draft implementing acts:

- ▶ draft Regulation of the Minister of Infrastructure and Construction on the organisation of the Railway Passenger Rights Ombudsman and on the out-of-court resolution of passenger disputes,
- ▶ draft Regulation of the Minister of Infrastructure and Construction on the out-of-court proceedings for resolution of consumer disputes in the field of postal services conducted by President of the Office of Electronic Communications,
- ▶ draft Regulation of the Minister of Digital Affairs on the out-of-court proceedings for resolution of consumer disputes in the field of telecommunications services conducted by President of the Office of Electronic Communications,

¹⁴⁸ Act of 22 July 2016 amending the Energy Law Act and certain other acts (Journal of Laws of 2016, item 1165). The Act entered into force on 2 September 2016.

- ▶ draft Regulation of the Minister of Finance on the out-of-court proceedings before the Financial Ombudsman,
- ▶ draft Regulation of the Prime Minister on the organisation and operation of the Trade Inspection Authority for out-of-court resolution of consumer disputes,
- ▶ draft Regulation of the Minister of Justice on the rules of organisation and operation of arbitration courts,
- ▶ Draft Act amending the Aviation Law Act.

The comments submitted concerned consistency with the Act on Alternative Consumer Dispute Resolution as regards the detailed procedures. These comments were taken into consideration in the drafts.

UOKiK also issued a number of opinions regarding compatibility with the provisions of competition and consumer protection law, including:

- ▶ draft Act amending certain Acts to Facilitate the Recovery of Debt,
- ▶ draft Act on Transformation of the Right of Perpetual Usufruct of Developed for Housing Purposes into the Right of Ownership of land,
- ▶ draft Urban Planning and Construction Code Act,
- ▶ draft Act amending the Act on Travel Services and certain other acts,
- ▶ draft Act amending the Act on Payment Services and certain other acts,
- ▶ draft Act on Distribution of Insurance,
- ▶ draft Act amending the Energy Law Act (UC 2),
- ▶ draft Act amending the Criminal Code Act and certain other acts (the "anti-usury law"),
- ▶ package of draft Acts on loans indexed to/ denominated in foreign currencies,
- ▶ draft Act amending the Code of Administrative Procedure Act,
- ▶ draft Act on Public Documents,

- ▶ draft Act amending the Act on Healthcare Services Financed from Public Funds,
- ▶ proposal for an amendment to the Act on the management of packaging and packaging waste,
- ▶ Act on Waste Electrical and Electronic Equipment,
- ▶ Regulation of the Minister of Development on the limitation of volatile organic compounds in certain paints and varnishes intended for painting buildings and their finishing, furnishing and building components and structures and in mixtures for renovation of vehicles.

Moreover, UOKiK issued opinions to the implementing regulations to the Act on Conformity Assessment and Market Surveillance Systems (10), as well as other acts implementing the EU harmonisation laws adapted to the new legal framework¹⁴⁹ (3).

10. International legislation

Apart from its activity in the area of national legislation, UOKiK takes an active part in legislative initiatives in the European Union. The Authority's representatives prepare the positions of the Government for EU projects and participate in the work of the EU Council working groups, where detailed provisions of draft European acts are negotiated. In matters where UOKiK is designated as the cooperating body, the Authority ensures that competition rules and consumer interests are properly protected.

Examples of UOKiK's activities concerning international legislation

Negotiations of Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws COM (2016) 283.

UOKiK was responsible for negotiations within the EU Council during the legislative work on the draft regulation.

¹⁴⁹ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218 of 13.08.2008, p. 30) and Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, repealing Council Decision 93/465/EEC (OJ L 218 of 13.08.2008, p. 82).

The aim of the proposed amendments is to strengthen cooperation mechanisms on enforcement of the laws set out in Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws. With strengthened powers tailored to the needs of the digital age and with EU priorities and cooperation in their implementation, the authorities in the Member States are expected to be able to work together to combat widespread infringements. This will allow for faster and more efficient operation, as well as reduction in the costs. The responsibility for enforcing EU consumer protection laws is to lie with the Member States. If there is a clear need for action at the EU level, the Commission will play a key role in supporting effective coordination between national authorities. UOKiK supported the solutions that would help to increase the effectiveness of consumer law enforcement in relation to cross-border violations. During the work on the amendment to the Regulation, many important issues were clarified, in a manner consistent with the objectives outlined in the position of the Government of the Republic of Poland. First and foremost, the provisions on the minimum powers of the competent authorities were clarified, and the procedures for coordinated actions were properly structured.

Coordination of the work carried out by the EC in connection with the review of the consumer *acquis* on the part of Poland

Since 2012 the EC has implemented the Regulatory Fitness and Performance (REFIT) programme, aimed at simplifying EU legislation and reducing the resulting costs. The EC, therefore, wants to create a clear, stable and predictable legal framework that will have a positive impact on economic growth.

In 2016, a review of the consumer *acquis* was conducted by the EC, for which UOKiK is the leading authority. The review covers:

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

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

The examined directives required review due to the lapse of time and changing market conditions. Adjusting the regulations to new technologies and media types, especially in the context of digital economy, is extremely important in light of the highly dynamic field of consumer protection. Consumers as a driving force of the internal market should be provided with protection measures tailored to the times they live in, adapted to new technologies of the digital age (also with regard to unfair practices they face every day while feeling safe in this market). In view of the above, UOKiK saw the need for a review, supported it and actively participated in it, alongside other entities.

Participation in the work on Directive on certain aspects concerning contracts for the supply of digital content (COM (2015) 634) and Directive on certain aspects concerning contracts for the online and other distance sales of goods (COM (2015) 635)

The complex, unclear and often differing rules of the Member States on contract law and the lack of sufficient knowledge of consumers and entrepreneurs in this regard are a barrier to cross-border online commerce, which is hampering economic growth in the EU. EU level regulations are only partial. To meet these challenges, the EC proposed harmonising certain aspects concerning contracts for the supply of digital content delivery agreements as well as

contracts for the online and other distance sales of goods, across the EU. The changes will enable prosperity in the cross-border trade in digital content and material goods, benefiting both businesses (access to new markets, increased turnover, reduced transaction costs) and consumers (greater choice, more favourable prices). Due to the limited scope of Member States' national regulations on digital content, the Commission decided to concentrate primarily on them, and subsequently on material goods, and therefore works are underway on the Directive on certain aspects concerning contracts for the supply of digital content while the work on the other Directive was temporarily suspended. UOKiK as a cooperating authority actively supported the Ministry of Justice in its work on the position of Poland regarding these acts, and during the process of negotiation of detailed provisions of the Directive. At every stage UOKiK emphasised that the precondition for the effectiveness of the consumer protection system was its transparency, simplicity and uniformity. Only a system like that will provide consumers with a guarantee of fair treatment and certainty in the market.

Preparation of the position of the Government of the Republic of Poland to Regulation of the European Parliament and of the Council on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy making in the field of financial services for the period of 2017-2020 COM (2016) 388

UOKiK prepared the position of the Government of the Republic of Poland, which positively assessed the idea of the regulation. The draft regulation provides for the establishment of an EU programme to increase the participation of consumers and other end-users of financial services, as well as stakeholders representing their interests in the legislative process and in shaping Union policies in the field of financial services. During the negotiations, UOKiK sought to prevent the planned regulations in the financial services market from only preserving the current state and bring them to a position whereby they would enable the widest possible representation of the interests of consumers from all Member States.

Preparation of the position of the Government of the Republic of Poland to draft Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

The draft amendment of the Regulation provides for the extension of block exemptions with new state aid objectives, i.e. investment aid for regional airports and marine ports. It was consulted twice in 2016. UOKiK prepared both positions submitted to the Commission. In the position, the Polish authorities proposed, among others, inclusion in the regulation of admissibility conditions also for operating aid (the Commission's proposal only concerned investment aid). This proposal was not included in the second draft.

Involvement in the work on the EC initiative to establish a Single Digital Market

On 7 May 2015, the European Commission published a Communication on the Digital Single Market Strategy (DSM), which aims to make the European Union a coherent, digitally integrated economic organism. Lifting up the barriers to digital development in the EU and creating a true single market will allow European companies to benefit from the existence of a large European market, allowing for equal competition with global leaders in the digital economy. From the very beginning of the work on the initiatives presented in the DSM Strategy, UOKiK took the view that the new rules, while justified with a view to facilitating business activity, should at the same time ensure a high level of consumer protection, not lower than that resulting from the current acquis and European case law, especially in areas such as consumer sales or electronic commerce. The Authority also pointed out the problem of enforcement on entrepreneurs who actually do business in the EU but have offices outside its territory.

Participation in work on Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, i.e. the Regulation on geo-blocking

The general aim of the draft regulation on geo-blocking is to provide consumers, regardless of their nationality or place of residence or business in the EU, with better access to goods and services in the single market by preventing direct and indirect discrimination in cross-border e-commerce (when shopping online) as well as when travelling to other Member States to purchase goods or services. The proposal establishes in particular the obligations on traders, according to which they cannot, in certain circumstances, discriminate against consumers on the basis of the place of residence of the latter. The initiative focused in particular on situations where there is no objective reason for a different treatment of domestic and foreign customers.

According to the Commission, unjustified geo-blocking and discrimination on the grounds of the place of residence is incompatible with the single market idea and is the reason for the low scale of cross-border e-commerce. UOKiK as a cooperating authority actively supported the Ministry of Development in its work on the position of Poland regarding these acts, and during the process of negotiation of detailed provisions of the Regulation. The main objective of the Authority was to ensure a high level of consumer protection.

IV. SOCIAL SURVEYS AND MARKET ANALYSES

Examples of market studies and analyses

11. Market studies and analyses

Market studies and analyses comprise an important element of UOKiK's activity¹⁵⁰. For the Authority these are a source of information on the specificities of a market sector, in particular the level of competition and the degree of concentration. Markets are most often monitored where, due to their specific nature, there is a greater likelihood of practices threatening the development of competition. The studies are conducted in the form of surveys addressed to entrepreneurs operating in a market sector. The information obtained is also used in cases concerning infringements of competition laws.

In 2016, UOKiK conducted **21** studies on the state of competition, of which **18** concerned the domestic market and **3** local markets. **9** studies were completed.

Separate studies (not included in the presented data) were conducted in the context of proceedings in concentration cases. They served the purpose of a direct analysis of the impact of planned concentrations on the market (Part II).

Study of the domestic fuel oil market

The study was conducted in response to signals coming to UOKiK from market actors. Its primary objective was to determine the degree of concentration in the market for the first sale of fuel oil, as well as to define the relevant market in terms of product and geography.

Fuel oils are used as heating substances. Polish Standard PN-C-96024 distinguishes between light fuel oils and heavy fuel oils¹⁵¹. They differ primarily in their use, and therefore also in the type of entities interested in buying them. Light fuel oils are the fuel used mainly for firing heating boilers in residential premises and small and medium-sized businesses and institutions. Heavy fuel oils are mainly used for heating of large industrial halls, but also for firing onshore and offshore steam boilers. The study examined the structure of market actors, dynamics and size of the markets covered in 2011-2014. The study showed that both markets (light oil market and heavy oil market) are highly concentrated. Five entities are active on both of them. In the case of light fuel oils, PKN Orlen and Lotos, which sell products to final customers through authorised and unauthorised distributors, hold a large market share. During the study, a trend towards reducing the sale of light fuel oils to non-members of authorised distributor chains was found. This type of conduct can lead to barriers in the market and, as a consequence, possibly prevent new

¹⁵⁰ UOKiK may conduct investigations as a market study, in particular to determine the market's structure, level of competition and degree of concentration.

¹⁵¹ Market actors also offer pyrolysis oils. These are, however, relatively low quality products, which in entrepreneurs' offers are usually presented not as a heating substance but as a component of fuel oil or an intermediate.

entrants from entering the market for light oils. On the other hand, PKN Orlen is the market leader for the first sale of heavy fuel oils, and has a market share of well above the threshold of a presumed dominant position in the range from 50% to 70%. The market shares of none of the other entrepreneurs operating on the market are higher than 20%, which means that the market is also highly concentrated. In view of these facts, UOKiK will continue to monitor developments in the fuel oil market in terms of free competition.

Study of the cash register market

The study was initiated as a result of signals received by UOKiK about distortions of competition in the area of the device technical service market, also due to a significant degree of regulation of the market, which could potentially increase the anti-competitive practices of its participants. Taxpayers, who are obliged to use cash registers, have in principle two choices. They can purchase new devices or replace the fiscal module/memory in existing fiscal devices. As a result, two segments can be distinguished in the market, i.e. the market for cash registers and a much smaller market for replacement of fiscal modules. In 2009-2015, cash registers were placed on the market in Poland by 12 to 19 manufacturers/importers of fiscal devices. Two groups of entities dominate in the market for cash registers, i.e. Comp Group (Comp and Elzab) and Posnet. Their total market share was in the range of 70% to 90%. The market of cash registers can be divided into two segments, namely the fiscal printer segment and the larger segment of fiscal cash registers, which also features a higher degree of concentration. The largest entity operating in this segment is Comp Group. In the case of fiscal printers, Posnet is the biggest actor in the market. The fiscal printer segment compared to the fiscal cash register segment is less concentrated, although the level of concentration is still high.

12. Social surveys

Social surveys commissioned by UOKiK concern primarily consumers and entrepreneurs. They are a source of intelligence on the level of knowledge of selected legal issues, consumer attitudes and the level of confidence and security of consumers in particular markets. The results are a valuable source of information in the context of the information and education campaigns organised by UOKiK. The Authority also uses the surveys to improve cooperation with stakeholders.

In 2016, UOKiK conducted **3** surveys, of which 2 on consumer attitudes.

Examples of social surveys

Awareness of alternative dispute resolution in consumer cases (ADR)¹⁵²

The survey was conducted in connection with legislative changes and the introduction of a system solution for (out-of-court, alternative) dispute resolution by arbitration (ADR). The results show that only one out of three respondents has heard of the ADR system, with that knowledge being cursory or even deformed. 27% of the respondents had filed a complaint within the previous two years. Where this was rejected, they took no further efforts in this regard. Where there were actions taken on the non-recognition of a complaint, these most often took the form of an individual attempt to reach an agreement with the trader or a referral to consumer ombudsmen. Only 6% of the respondents had taken advantage over the previous two years of assistance provided by ADR institutions, which confirms the low level of public awareness in this regard. In 2017, the regulations governing the ADR system in Poland came into force, so UOKiK had planned information activities to promote alternative dispute resolution among consumers.

Consumer on vacation¹⁵³

The survey was conducted within the campaign "Before the vacation – what you should know?" (see [Part V](#) for more information). It was the sixth edition of the survey concerning the awareness of Polish consumers about their rights in the tourist services sector. The analysis of previous data shows that consumer knowledge has increased in recent years in this regard. Compared to 2015, more Poles are aware that they have the right to complain about an unsuccessful tour under first and last minute offers (54% vs. 45%). The knowledge of the consequences for the tour operator for failure to respond to a complaint has definitely improved. 41% of the respondents rightly believe that silence in this case means that the complaint is deemed to have been accepted. In 2015, only 28% knew the correct answer. Unfortunately, as in the previous years, every fourth consumer fails to read the contract with the tour operator.

¹⁵² The survey was carried out by Research Institute ARC Rynek i Opinia on the order of UOKiK in July 2016. The survey was carried out by the CAWI (Computer Assisted Web Interview) method using the agency's own panel at epanel.pl. The representative sample comprised 1 248 respondents aged 15-55 years. In addition, the survey featured a booster, i.e. additional interviews with those who had filed consumer complaints (so that they number was at least 500 people).

¹⁵³ The survey was carried out by TNS on the order of UOKiK in May 2016, on a sample of 1 022 people aged 15 and over.

V. INFORMATION AND EDUCATIONAL ACTIVITIES

UOKiK's educational and information activities concentrate on conducting social campaigns, organising conferences, debates and workshops, and developing and distributing publications free of charge. The Authority also runs a number of other projects aimed at raising consumer awareness and knowledge about new and existing legal regulations.

UOKiK's initiatives in 2016 were appreciated by the organisers of the contest¹⁵⁴ of the International Competition Network (ICN) and the World Bank for the best educational and information project in the field of competition law. The Authority was awarded a distinction for [the preparation and promotion of the guide to competition law for cemetery administrators and funeral undertakings](#)¹⁵⁵. In the justification

¹⁵⁴ "2015-2016 Competition Advocacy Contest: How to Build a Culture of Competition for Private Sector Development and Economic Growth" is organised by the International Competition Network (ICN) in cooperation with the World Bank Group. Within the contest, the antitrust authorities of the ICN member countries provided examples of successful campaigns conducive to creating a competitive environment for entrepreneurs through soft actions, such as educational campaigns.

¹⁵⁵ The guide provides a description of the market for cemetery and funeral services, examples of illicit practices based on previous judgements of the Authority and court case law, as well as advice on how to ensure legal compliance. The document was sent out to municipalities and parishes that administer burial sites.

of the award, it was emphasised that UOKiK's activities as a whole enabled consumers to access cheaper services offered by a higher number of competing entrepreneurs.

The Authority's website features also the **Public Information Bulletin** (Biuletyn Informacji Publicznej). In 2016, 709 requests for public information were submitted to and considered by UOKiK.

13. Promotion and education

13.1. Campaigns, educational and information projects

Campaign "Law says that you can"

In 2016, UOKiK continued the "Law says that you can" campaign that had started two years earlier, to promote two key consumer rights, i.e. [the right to complain](#) and [the right to withdraw from the contract when shopping online](#). Project banners were posted on the largest websites and on Facebook,



with notices broadcast on smartphones. This was supported by a mailing campaign to encourage access to the website at www.prawakonsumenta.uokik.gov.pl. It provides clarifications for the most important issues related to the Consumer Rights Act. It also includes answers to frequently asked questions and a quiz and allows consumers to download useful brochures, leaflets and complaint templates. The website enjoys continued high interest from consumers¹⁵⁶.

Website finanse.uokik.gov.pl

The website www.finanse.uokik.gov.pl enables consumers to familiarise themselves with activities undertaken by UOKiK, public administration bodies and courts towards banks operating mortgage loans in Swiss francs and insurance companies offering unit-linked insurance products. A notification form is available on the website, by which consumers can notify the Authority about a practice, which may violate collective consumer interests. In 2016, the Authority received 266 notifications¹⁵⁷ in cases concerning Swiss-franc loans 257 notifications for unit-linked insurance policies¹⁵⁸.

Campaign “Make friends with arbitration!”

In December 2016, UOKiK started the first stage of the education and information campaign concerning the Act on Alternative Consumer Dispute Resolution, in effect from 10 January 2017. The Authority addressed its first actions to entrepreneurs. An information package consisting of [the Act](#), [a leaflet](#) and a set of answers to frequently asked

¹⁵⁶ Since the launch, i.e. from 3 November 2014 until the end of December 2016, the website visitor counter showed over 1 million 245 thousand visitors.

¹⁵⁷ Notifications were sent in via the forms <https://finanse.uokik.gov.pl/chf/zawiadom-uokik> and <https://finanse.uokik.gov.pl/ufk/zawiadom-uokik>.

¹⁵⁸ Since the launch of the service on 27 April 2015 until the end of 2016 the website was visited over 114 thousand 600 times.

[questions](#) was sent out. Actions aimed at consumers were planned for 2017.

Competition law in public procurement – a project co-financed by the European Union

In 2016, the Authority sought to obtain EU funding for the project “Knowledgeable Contracting Authority - Competition Law in Public Procurement Tenders”. In November, an agreement was signed on the implementation of the project under the Knowledge, Education, Development Operational Programme 2014-2010 (KED OP). Two tasks are planned for 2017. The first one will include the organisation of stationary training sessions on collusive tendering for public procurers. The objective of the second one is to create an e-learning platform and develop online training on collusive tendering/bid rigging.

Information campaigns and guides

UOKiK also conducts various types of information campaigns aimed at raising consumer awareness on both consumer rights and the quality and safety of products and services on the market. Activities undertaken in 2016 include:

- ▶ seventh edition of the campaign “[Before the vacation - what you should know?](#)”, in which 40 institutions took part, giving tips and advice for vacation leave planning,
- ▶ English-language [Consumer Guide for World Youth Days](#), organised in Cracow in 2016, featuring useful information for foreign visitors on transportation, accommodation and shopping in Poland,
- ▶ a guide [How to buy led lamps](#), featuring tips for the comfort and safety of use of this type of lighting.

13.2. Conferences, workshops and debates

Organising conferences, workshops and debates is a route of the Authority's communication with stakeholders. These include not only consumers but also consumer ombudsmen, lawyers, entrepreneurs and industry organisations, NGOs as well as representatives of the academic community.

World Consumer Rights Day

On the occasion of World Consumer Rights Day on 16 March, UOKiK organised a debate "[Consumer on the telecommunications and e-commerce market](#)". Panellists provided summaries of the current duration of the Consumer Rights Act and attempted to evaluate compliance of the business sector with the statutory obligations, among others for conclusion of contracts by phone. The meeting was also an opportunity to discuss the problem of unilateral changes to contracts made by, among others, telephony operators.

Workshop "Cartels: information sharing and leniency procedure"

On 25 October, the Authority organised a workshop "[Cartels: information sharing and leniency procedure](#)". It was an attempt to answer the following questions: when information sharing can be considered an illicit agreement, whether the leniency programme is effective and whether it is effective to source information from whistleblowers. The meeting provided for a discussion on the current issues and challenges of effective combating cartels. It was attended by representatives of the European Commission, national competition protection authorities, Polish and foreign antitrust law experts and representatives of the academic community.

Workshop "State aid concept – new communication from the European Commission"

The event organised by UOKiK on 17 and 18 November was attended, among others, by experts from the European Commission's Directorate-General for Competition. The workshop was addressed to experts from central and regional institutions involved in the design and implementation of aid measures. It provided for the transfer of substantive knowledge about the new regulations on state aid, as well as the networking of various institutions involved in providing state aid. The discussions covered, among others, the issues

related to financing of infrastructure, issues of local projects in the context of competition protection, transparency of aid in connection with the functioning of the SUDOP system.

13.3. Competitions

Competition for the best master and doctoral theses

As in the previous years, UOKiK again awarded prizes for [the best master theses](#) in the field of consumer and competition protection. In addition, for the first time ever, it awarded prizes for [doctoral theses](#). Three prizes were awarded in this competition, with the total value of PLN 16 k, all of which in the field of competition protection. The Authority will consider doctoral theses once every three years. The final of the next edition will take place in Q1 2019.

Wielkopolska Consumer Knowledge Olympiad

54 students of upper secondary schools competed for prizes in the twelfth edition of the Elżbieta Połczyńska Wielkopolska Consumer Knowledge Olympiad. The extent of material that they had to master was broad. The questions concerned, among others, the acts on consumer rights, tourist services, counteracting unfair market practices and consumer credit. Participants also had to demonstrate their knowledge of the procedures before a standing consumer arbitration court and of practices that violate collective consumer interests. In the finals, ten students demonstrated superior knowledge of consumer law over the rest of competitors and won valuable prizes and distinctions.

The Olympiad was organised under the auspices of President of the Office of Competition and Consumer Protection and Marshal of the Wielkopolskie Province.

13.4. Publishing activities

In 2016, the Authority prepared [Water Supply and Sewerage Services Guide. Overview of issues in the light of UOKiK's decisions](#), a unique guide to this market. The publication addressed the irregularities that were the subject of the Authority's decisions, and based on them, advice was provided to consumers and entrepreneurs concerned. The guide was also sent out to water supply companies and local governments across Poland.

A publication aimed at raising consumer awareness for signing contracts is the leaflet published in 2016, i.e. [Abusive clauses](#). It features examples of prohibited clauses, tips on what to do if such clauses are found in the contract and information on where to look for assistance. It also clarifies the difference between the inspection of clauses in individual consumer contracts and the inspection of standard contracts.

Moreover, in connection with the entry into force of the Act on Alternative Consumer Dispute Resolution on 10 January 2017, the Authority prepared a leaflet [Out-of-court resolution of consumer disputes](#). It shows in an accessible and pictorial way the operation of this system.

UOKiK also published two master theses by the winners of the Authority's competition for the best master thesis, i.e. [Assessment of market power of enterprises in antitrust proceedings](#) and [Conditional discounts granted by dominant enterprises in the light of EU competition law](#). What is more, the Authority published a doctoral dissertation entitled [Poland's execution of the European Commission's decisions ordering the recovery of state aid under EU law](#).

Further, in view of the great interest in previously published materials, [Consumer Handbook](#) and [Consumer Laws for Entrepreneurs](#) brochures were published, along with the leaflets [Statutory Warranty. How to complain?](#), [How to buy?](#) and [Online Shopping](#).

13.5. Cooperation with the media

Media coverage of UOKiK's activities

UOKiK issued numerous press releases about the current and planned activities, published in the media and on the Authority's website. The information provided most often concerned consumer protection (112 out of 213 releases issued). There were also 35 releases on competition and 24 releases on concentration control¹⁵⁹.

The following were published in matters directly or indirectly related to UOKiK's activities: 32 936 online publications and 30 555 references¹⁶⁰ in social media, 4 475 press articles and 2 670 radio and television materials. UOKiK was also

covered in foreign publications (96 times in Policy and Regulatory Report, Global Competition Review and MLex Market Insight).

UOKiK conducted information activities on Twitter, publishing 262 tweets¹⁶¹, which were followed by 2 028 users.¹⁶² In cooperation with the media, UOKiK participated in weekly broadcasts of Consumer Advocate on the "Polish Radio 24"¹⁶³ and in accompanying helpline standbys. These programmes raised consumer awareness on consumer rights, ways to get free assistance, and the role of UOKiK. UOKiK's activities and plans were reported in articles, interviews and media appearances of UOKiK representatives.

¹⁵⁹ The other press releases were summaries of conferences, statements, etc.

¹⁶⁰ This does not include posts authored by UOKiK.

¹⁶¹ UOKiK's authored posts were shared by users 1 136 times (retweets).

¹⁶² The number of followers since the setting up of the account in 2015 until the end of 2016.

¹⁶³ Q4 2016.

VI. INTERNATIONAL COOPERATION

An important aspect of UOKiK's activities is cooperation with other national authorities and international organisations involved in competition and consumer protection both in the horizontal perspective and within the narrower market sectors. International cooperation also relates to the issues of state aid and market surveillance and supervision. As a Member State of the European Union, Poland participates in the EU decision-making process and works closely with the other Member States and with the institutions of the European Union. UOKiK also cooperates with non-European organisations.

14. Multilateral cooperation

COMPETITION PROTECTION

European Competition Network (ECN)

In 2016, UOKiK employees participated in the working groups and subgroups for cartels, concentration control, cooperation and procedures, transport, penalties, professional services, investigative informatics, restrictions on online sales, food, telecommunications, energy, pharmaceuticals, banking and payment markets, as well as the group for promoting competition and communication protection policy.

UOKiK hosted the meeting of **the cartel working group**, which took place on 25-26 October 2016 in Warsaw. It was attended by representatives of the European Commission and national competition authorities. The meeting discussions covered the current issues and challenges for effectively combating cartels, including the practical aspects of procedure for simplified leniency applications. The meeting was accompanied by an international workshop "Cartels: information sharing and leniency procedures" (described in more details in [parts II and V](#)).

The main focus of **the telecommunications working group** was the issue of network sharing by telecommunications operators and competition law issues in the context of bundle offers. **The food working group** contributed to a draft regulation for the meat and egg sector. During the meetings, members of the group also discussed competition in agricultural and manufacturing markets as well as anti-competitive practices in the retail market. **The environment group** discussed the activities of competition authorities in the waste market and the legislative package for the circular economy prepared by the EC. **The concentration group** debated on how to estimate the buyer's power as part of the merger control process and define geographically relevant markets. **The vertical agreements group** concentrated on the market for online accommodation booking platforms and

the European Commission's e-commerce market research. UOKiK's participation in the work of this group was particularly important because of the national investigation under which the Authority examined the terms of cooperation between owners of online accommodation booking platforms with hotels. **The group for promotion of competition and communication protection policies** discussed the challenges related to reforms to increase competition in the context of the European Semester and the advantages and disadvantages of using social media to communicate about antitrust proceedings. On the other hand, the report on the functioning and future of the Insurance Block Exemption Regulation (IBER)¹⁶⁴ was the subject matter of a meeting and discussion of **the insurance services group**. The meeting of the **pharmaceuticals and healthcare group** mainly focused on the proceedings of the national competition authorities in the pharmaceutical sector, particularly in the wholesale distribution of medicines. The meetings of the group also discussed market research of pay-for-delay settlements.

UOKiK also participated in meetings of **Chief Economists** to discuss pay-for-delay settlements, the application of surveys by the competition authorities in the context of concentration control and the definition of the relevant market, as well as conducting economic analysis on the public procurement market.

The management of the Authority took part in the annual **DGs meetings**, which aim to develop a coherent and effective European competition policy. The main topics discussed in 2016 were the protection of personal data in the context of competition law, the detection of cartels and the efficient exchange of information between Network members. A key issue raised at the DGs meetings was also the initiative of the European Commission to increase the powers of antitrust authorities in the EU and public consultations in this area.

Another important tool which enables knowledge and experience sharing within the ECN consists in **informal inquiries** that may be sent by antitrust authorities. In 2016, UOKiK prepared responses to 56 inquiries concerning the pharmaceutical market, public procurement and the acquisition of electronic evidence and the lawyer's secret. The Authority issued 7 inquiries to ECN members. These related to, among other, practices that violated competition law in the banking sector, contractual advantage in B2B relations on the food market, and abuse of a dominant position in the market for travel booking software. The responses received

to the inquiries proved to be helpful in the investigations and antitrust proceedings conducted by UOKiK.

Apart from cooperation within the European Competition Network, UOKiK participates in annual meetings of Heads of **the European Competition Authorities (ECA)**. At these meetings, representatives of individual competition authorities present, among others, the latest results of their work. In 2016, participants discussed the cooperation between the competition authorities, the application of remedies, the sharing economy and the protection of complainants to antitrust authorities.

Organisation for Economic Cooperation and Development (OECD)

OECD is one of the most important international forums on competition policy and law. In 2016, UOKiK participated in meetings of the OECD Competition Committee, its working groups, among others, the Working Party on Competition and Regulation and the Working Party on International Cooperation, as well as in the Global Competition Forum. In 2016, the main topics of the meetings were innovations in the professional services market, competition in the public procurement sector and evaluation of the effectiveness of the activities of competition authorities. Other topics discussed during the OECD meetings concerned the development of competition and innovation in the land transport market, the definition of the geographically relevant markets, the penalties policy and the issuance of conditional decisions and those blocking notified mergers.

International Competition Network (ICN)

The Authority is a member of the International Competition Network, which is a platform for cooperation and exchange of experience of more than 130 competition authorities from around the world. In 2016, UOKiK's representatives participated in five working groups of the network for cartels, unilateral market practices, effectiveness of antitrust authorities, promotion of antitrust law and concentration control. As part of the work in the aforementioned groups, UOKiK shared its experience in the field of the training policy operated by the Authority and the principles of ethics in public administration. Moreover, within the framework of the cartel group, the Authority presented the system of fines in the antitrust proceedings used by the Polish competition authority.

¹⁶⁴ Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector.

European Consumer Summit

The REFIT programme was also the leading theme of the European Consumer Summit, attended by representatives of UOKiK. Organised annually by the European Commission's Directorate-General for Justice and Consumer Affairs, the European Consumer Summit is designed to address current issues in the field of consumer protection. These meetings provide an opportunity to raise awareness of the consumer policy and an important tool to highlight the importance of consumer interests in key EU policies.

In 2016, the European Consumer Summit was accompanied by additional meetings of the CPN, the CPC and the European Consumer Consultative Group (ECCG) as organised by the European Commission.

Consumer Protection Cooperation Committee (CPC)

UOKiK took part in regular meetings of the Consumer Protection Cooperation Committee, which discussed current consumer protection issues in the European Union. The topics discussed in 2016 included the REFIT Fitness Check, Electronic Commerce Package presented by the European Commission in May 2016 and the amended draft Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

Broadly discussed issues also included topics related to the development of the digital economy, among others, the phenomenon of the sharing economy, whose rapid rise in popularity forces action at EU level. A public consultation on this subject and a regulatory environment study were proposed. These activities are expected to reduce uncertainty on the part of consumers regarding their rights and obligations. The creation of guides and recommendations will minimise the fragmentation of regulation in the EU and enhance legal certainty.

The Committee also reviewed the work on the Volkswagen case, identifying serious misconduct by the breach of the Unfair Commercial Practices Directive and misleading advertising.

UOKiK was also requested to diagnose the action priorities of the CPC network in 2017. The Authority pointed to the financial and telecommunications services market and proposed, among others, a review of irregularities related to the provision of high-charge services, the absence of express

consent to extra charges in telecommunications services, and infringements in the area of online investment platforms.

The Authority took part in the annual Sweep of the Internet, the subject of which in 2016 consisted in broadly understood tourist services (ticket search, flight search, tour search).

In 2016, UOKiK continued its active cooperation with the European Consumer Centre (ECC) in connection with the competences of the Authority as the body responsible for coordinating the implementation of the CPC Regulation.

The ECC regularly filed notifications to UOKiK on suspected use of practices violating the collective interests of Polish consumers by foreign entrepreneurs established in the Member States of the European Union. These notifications were the result of complaints submitted to the ECC by consumers. The cases reported by the ECC concerned, among others, air transport services, air ticket sales, courier services, online stores, and an online dating service. The cases notified by the ECC were passed by the Authority via a computer system (CPC System) to competent authorities in the Member States of the European Union, together with the request for taking the necessary measures to bring the intra-Community infringement to an end. The active and effective cooperation of public authorities in cross-border infringements of consumer rights is essential for achieving higher consumer protection standards and a uniform EU law enforcement approach, enabling consumers to fully exploit the potential of the single market.

Consumer Financial Programme Committee (CFPC)

Every year, the European Commission sets its annual work agenda, defining the different budget lines for consumer policy that will be implemented in a given year.

The multiannual consumer protection programme for 2014-2020 was established under Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014-2020 and repealing Decision No 1926/2006/EC. UOKiK's representative took part in the meeting of the Consumer Financial Programme Committee, to which the annual programme is submitted. The committee is composed of representatives from all EU Member States. The meeting is held in the last quarter of each year to give an opinion on the work programme for the next year. During the meetings of the Committee the EC also presents information on the progress of implementation of the work programme for the current year.

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

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

The meetings of the ODR contact points organised by the European Commission serve an exchange of experiences on the functioning of the ODR system in the EU Member States. During the meeting, the ODR contact points presented their experience of the ODR platform since its launch, contacts with users and the most frequently asked questions. The issue of cooperation between contact points and a new IT tool for exchanging information and discussions between ODR contact point advisers was also discussed. The European Commission's Directorate General for Justice and Consumer Affairs (DG JUST) presented up-to-date information on consumer policy and reorganisation within the Directorate during the part of the meeting attended by representatives of the European Consumer Centres. The progress of implementation of ADR/ODR legislation in the EU and the functioning of the ODR platform were presented, along with the first data on the use of the ODR platform and information on the communication activities for ADR/ODR at EU and national level. The meeting of the ODR contact points provided an overview of the ODR system operation in other member States, in legal, communication and technical terms. This information will be helpful in conducting national activities.

The meetings of Directors of the European Consumer Centres were mainly devoted to the exchange of experience in ECC activities, as well as cooperation of the centres with ADR competent authorities and within the framework of the ODR platform.

International Consumer Protection and Enforcement Network (ICPEN)

ICPEN is an organisation that brings together consumer protection authorities from over 50 countries. The mission of the Network is to exchange information on cross-border market practices that may have a negative impact on consumer interests, and to promote cooperation between the authorities responsible for implementing consumer legislation.

In 2016, UOKiK's representatives took part in workshops and conferences organised by the German ICPEN Presidency. These meetings were devoted to the challenges in the

application of consumer protection law in the digital world (with particular emphasis on consumer law and consumer privacy enforcement) and the cooperation of law enforcement agencies in the digital age, with particular emphasis on the synergies between competition and consumer protection and partnership building with a view to strengthening cross-border cooperation and taking coordinated action on law enforcement by the authorities responsible for competition, consumer and privacy protection.

The Authority also took part in the annual ICPEN Internet Sweep, which in 2016 was devoted to the topic of opinions and recommendations in the digital world. Out of the 147 swept websites, 36 were found to be inaccurate, in terms of posting false opinions, lacking information about sponsored posts on blogs, misleading advertising targeted at sensitive consumer groups (elderly, children), lacking information on how to create rankings on forums and social networks, and unfair practices aimed at attracting consumer attention.

OECD Consumer Policy Committee

UOKiK also monitors the work of the OECD Consumer Policy Committee, which brings together representatives of consumer protection authorities in Member States, experts from social organisations and entrepreneurs. In 2016, the Committee's work focused on issues of electronic commerce, consumer protection in the online platform environment, challenges related to the development of the Internet of Things¹⁶⁵ and a wider use of the behavioural approach to consumer protection activities.

Product safety and market surveillance cooperation

It is not possible to ensure a high level of consumer safety in the EU single market without close cooperation with partners from other Member States. Therefore, UOKiK actively participates in international inspection projects, i.e. **joint actions**. In 2016, the Joint Action 2013 project, launched in 2014, was completed for safety of toys. At the same time, the activities related to the inspection of pyrotechnic articles and power tools (Joint Action 2014) were continued. In addition, the Authority pursued activities under the EEPLIANT 2014 (Energy Efficiency Complaint Products 2014) project. Its aim is to improve cooperation and strengthen market surveillance authorities in enforcement of

¹⁶⁵ Internet of Things – a term referring to the various types of devices that can communicate with each other over the network.

ecodesign and energy efficiency laws. In 2016, a project related to safety of toys (chemical properties) and the development of a risk assessment methodology (Joint Action 2015) was launched. The project is attended by a record number of market surveillance authorities (37 out of 24, including from Norway and Iceland). The project started in early 2016 and will take 26 months to complete.

In addition, UOKiK's representatives participated in meetings of **Administrative Cooperation Groups** (AdCos) for the following directives: toy safety, electrical safety and pyrotechnic products safety (chairing the group for a 2-year term), and in the meeting of the horizontal working group of AdCo chairs (Horizontal AdCo-Chair). In 2016, the inaugural meeting of AdCo textile labelling was held. The meeting was to share experiences of inspection activities, good inspection practices and views on the most effective enforcement methods for the benefit of the vulnerable market participants.

Preparatory work was also completed on monitoring compliance with the EU **tire labelling** requirements. The project is financed from EU funds (Horizon 2020), with 14 Member States as participants. The inspection activities planned for 2017 will include, among others, laboratory tests of selected tire batches for accuracy of labelling/markings. The organiser of the project is the PROSAFE Foundation, a pan-European platform for the exchange of experience between market surveillance authorities.

The Authority also participated in the regular meetings of Expert Group on the Internal Market for Products – Market Surveillance Group – IMP-MSG. UOKiK was involved in the **Exchange of Officials Programme** in the area of market surveillance and safety of non-food products financed by the European Commission.

15. Bilateral cooperation

An important area of cooperation with foreign institutions is the direct contacts networking between the Polish competition and consumer protection authority and its counterparts from the partner countries of Poland, both within and outside the EU.

In 2016, President of UOKiK met with representatives of the German Federal Ministry of Justice and Consumer Protection: Gerd Billen, State Secretary, and Ulrich Kelber, Parliamentary State Secretary. The meeting was to discuss the system for protection of collective consumer interests, in particular the protection of consumers in the digital world, the implementation of the EU's Alternative Dispute Resolution

(ADR/ODR) legislation in the national legal systems, and the ongoing work on the proposal for Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation).

In addition, UOKiK organised a study visit for representatives of Bulgaria's market surveillance and consumer protection authorities. During the meeting, UOKiK's institutional model and competences were presented, in particular in the field of market surveillance, product safety and consumer protection, including the education and information activities of the Authority.

Visit of the International Energy Agency Review Team (IEA)

In view of the review of Poland's energy policy conducted by the International Energy Agency, a visit of the Review Team was held in Warsaw from 27 June to 1 July 2016. During the meeting of the Team with representatives of institutions, enterprises and organisations competent for the energy sector, UOKiK presented the activities of the Authority in the energy sector. UOKiK presented, among others, the market studies and proceedings on the energy market conducted by the Authority, as well as the measures related to energy efficiency and fuel market monitoring.

Postscriptum

Early 2017, the Act governing the out-of-court resolution of consumer disputes entered into force, and in mid-year the provisions of the Act on counteracting the unfair use of contractual advantage in trade in agricultural and food products will become effective. UOKiK thus faces challenges associated with the new competences and the need to carry out educational and information actions addressed market participants covered by the new regulations. The Authority will also work on the legal regulation for the whistleblowing programme aimed at combating illicit agreements.

Organisational structure and division of responsibilities

(as at 31 December 2016)

President

- Executive Office
- Department of Market Analyses
- Department of State Aid Monitoring
- Branch Offices

Vice-President (consumer protection)

- Department of Consumer Interests
- Department of Market Surveillance
- Department of Trade Inspection
- Trade Inspection Authority
- Laboratories
- European Consumer Centre (ECC)
- Collaboration with consumer organisations and consumer ombudsmen

Vice-President (competition protection)

- Department of Competition Protection
- Department of Concentration Control
- Legal Department

Director-General

- Office of Director-General
- Department of Budget and Administration
- Independent Position Protection of Classified Information

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