



Poland ❖

Introduction

Poland is the largest country in Central-Eastern Europe with over 38 million inhabitants. After overthrowing communism in 1989, Poland transitioned towards a market economy. Polish Government introduced the so-called “shock therapy” – deep systemic changes over a short period of time. Poland joined NATO in 1999 and the European Union in 2004.

Economy

Throughout the 1990’s Poland pursued a successful policy of economic liberalisation. The privatisation of small and medium-sized state-owned companies and a liberal law on establishing new firms encouraged the development of the private business sector. The services’ sector started to play a key role in economic development – today this sector makes up over 60 percent of Poland’s GDP. Still, much remains to be done and bringing down the high unemployment is one of the major economic policy challenges.

Poland’s economy was the only one that did not shrink in 2009, the year the financial crisis hit hardest. Since 2004, EU membership and access to EU structural funds have provided a major boost to the economy. Unemployment has been 2 percent more than the EU average. Inflation reached a low of about 2.6 percent in 2010 due to the global economic slowdown, but climbed to 4.3 percent in 2011.¹ Poland’s economic performance could improve over the longer term if the country addresses some of the remaining deficiencies in its road and rail infrastructure and its business environment.

For 2012 the coalition government has proposed further deficit-reducing reforms and to fulfill its promise to enact business-friendly reforms.

Competition Law Evolution and Environment

A competition law was not applied in the centrally-planned economy. The first attempt to introduce some regulations in this field took place in 1987, with the enactment of the Act on Counteracting Monopolistic Practices in National Economy.² The Act was only a temporary solution, however, for the first time in the post-war history of Poland.

PROFILE

Population:	38.2 million**
GDP (Current US\$):	514.5 billion**
Per Capita Income: (Current US\$)	12,480 (Atlas method)** 17,451 (at PHP.)*
Surface Area:	312.7 sq. km**
Life Expectancy:	76 years*
Literacy (%):	99.7 (of ages 15 and above)*
HDI Rank:	39*

Sources:

- World Development Indicators Database, World Bank, 2011
 - Human Development Report Statistics, UNDP, 2010
- (*) For the year 2010
(**) For the year 2011

In February 1990, in the beginning of a transformation period, the Parliament enacted The Act on Counteracting Monopolistic Practices (The Antimonopoly Act).³ The Act was to a great extent based on European models in the field of competition policy, but it also included solutions designed specifically for Poland as a transition economy.

At the same time the Antimonopoly Office was appointed. Its main tasks were, as follows:

- counteracting monopolistic practices; and
- analysis of the level of economic concentration.

In April 1993, the Act on Combating Unfair Competition was enacted. As unfair competition, the Act defined, among others, the following actions:

- misleading description of an enterprise;
- false description of the geographic origin of goods and services;
- imitation of products;
- limiting access to the market;
- unfair advertising; and
- bribery of a person of public function.

The competencies of the Antimonopoly Office have been frequently broadened. The most important reform took

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place in 1996, when the Antimonopoly Office assumed responsibility for consumers' protection policy. The name of the Office was changed into the Office for Competition and Consumer Protection (UOKiK).

One of the most important elements of a new policy was establishing the partnership between UOKiK and Trade Inspection, which controlled the legality and reliability of entrepreneurs' actions.

In the late 1990's, some of the regulations became outdated. In view of Poland's incoming accession to the European Union and necessity to harmonise national regulations with the European law, the need for a new competition law was felt. Thus, in December 2000, the Act on Competition and Consumer Protection was enacted.

The Act defined the principles of functioning of the entire system of competition and consumer protection, in which the President of the Office took the central position. One

of the most important changes was the implementation of specific terms of office and the obligation of appointment through competition.

The new regulations also allowed making competition-restricting agreements by entities with very small market share. Thus, the prohibition of competition restricting agreements did not apply to agreements concluded between competitors with combined market share in the year preceding calendar year, in which such agreement were concluded, not exceeding 5 percent and to agreements concluded between competitors operating at different levels of the market, with the combined market share in the year preceding calendar year, in which such agreements were concluded, not exceeding 10 percent.

In May 2002, the Act on Combating Unfair Competition was amended. The major aim of the amendment was to protect SMEs from unfair practices of large trade networks (like selling goods at prices lower than costs of production).

Box 1: Planned Changes to Competition Law

Polish legislators have confirmed their commitment to change significantly the provisions of the February 16, 2007 Act on competition and consumer protection (the Competition Act), with a view to increasing the effectiveness of the current legal framework, simplifying and shortening the underlying processes and reducing the existing procedural uncertainties. Specifically, the proposed amendments are expected to strengthen the position of the Polish Competition Authority (UOKiK) *vis-à-vis* undertakings that violate antitrust laws, thereby providing further protection to consumers and small and medium enterprises, both of which are susceptible to harm as a result of competition law infringements.

On November 20, 2012, the Polish Council of Ministers gave its approval to the draft proposal to amend the Competition Act. Amending the Act is a fundamental goal of the Polish Competition Policy for 2011-2013, which is designed to identify and tackle the most important issues surrounding competition in the economy. Despite still being at an early stage in the legislative process, the endorsement of the project by the Council of Ministers means the UOKiK will be able to initiate the drafting process. The amended Act will then be subject to a consultation procedure.

UOKiK's proposal provides for the amendment of the Act of February 16 on Competition and Consumer Protection in the following ways:

- **introducing a two-stage merger control procedure**, in which simple cases would be resolved within a period not exceeding 30 days from notification and cases that are more complex or raise doubts would

be resolved within a period not exceeding four months;

- **introducing a procedure for the authority to inform the notifying party of competition concerns** relating to a planned concentration, **or of a predicted negative decision**, while proceeding are still ongoing;
- **boosting the leniency programme**, e.g. by decreasing the fine imposed on a cartel member for participating in that cartel if it informs the authority of its participation in another cartel;
- **enabling businesses to submit voluntarily to a penalty**, which would involve giving up the right to appeal against the authority's decision in return for a 10 percent reduction in its fine;
- **allowing the authority to indicate specific actions** to be taken by a business to remedy the effects of its illegal conduct;
- **imposing financial penalties on individuals** responsible for illegal conduct.

All proposed amendments must be adopted by the Polish Government and Parliament before they come into force. The proposed amendments will undoubtedly change Polish competition law substantially, by improving and strengthening the position of enterprises and enhancing legal certainty. Furthermore, the intended increase in procedural efficiency will likely translate into a faster and more effective system that will not only speed up the relevant processes, but will also allow the stakeholders to obtain the necessary knowledge about their legal situation, enabling them to adjust their market strategies accordingly.

Source: <http://www.mwe.com>, 11 December 2012

In July 2002, within the framework of adaptation of Polish regulations to the EU law, the Act on Competition and Consumer Protection was amended as well. New regulations concerned the protection of consumers' collective interests.

2002 was also the year, the Office also made an effort to create a market supervision system for products under EU directives and a fuel quality monitoring system.

A new law on Competition and Consumer Protection was enacted on February 16, 2007 - the principal vehicle for the control of anti-competitive agreements between firms, abuse of dominant positions and mergers.

It is the fourth consecutive act of law in Poland protecting competition as an institutional phenomenon and the third act to enter into force after the introduction of market economy. Contrary to the first competition acts, the current one is not a homogenous act, because it contains instruments typical for competition law, set out in the Treaty on the Functioning of the European Union (Articles 101 and 102 TFEU), as well as instruments serving directly and exclusively consumer interests.

It sets out the main objectives of Polish competition policy; which covers:

- Prohibition of concerted practices, agreements and associations between firms which may prevent, restrict or distort competition and prohibition of abuse of a dominant position.
- Preventive supervision of mergers which may significantly impede effective competition in the market, in particular by the creation or strengthening of a dominant market position; by approving or prohibiting the envisaged alliances.

UOKiK exercises control over changes of market entities' structure (consolidation and mergers of market entities). The intention of concentration is subject to the notification to the President of the Office in cases, where combined turnover of the entrepreneurs participating in the concentration in the territory of Poland in the financial year preceding the year of the notification exceeds EUR 50 000 000 or where the combined worldwide turnover of entrepreneurs participating in the concentration in the financial year preceding the year of the notification exceeds the equivalent of EUR 1 000 000 000.

The exceptions in this regard are conditions under which:

- the turnover of the entrepreneur, over which the control is to be taken did not exceed, during any of two marketing years preceding the notification the equivalent of •10 000 000;
- the financial institution, the normal activities of which include investing in stocks and shares of other undertakings, for its own account or for the account of others, acquires or takes over, on a temporary basis, stocks and shares with a view to reselling them;

Box 2: PKP Cargo Fined For Delaying Compliance With Antitrust Decision

PKP Cargo has been fined PLN 1.7 million (• 404,265) by UOKiK for a delay of more than four years in complying with an order to discontinue applying, without objective justification, onerous and dissimilar terms and conditions to equivalent transactions with its contractors.

UOKiK, Poland's competition authority, ruled in December 2004 that PKP Cargo was abusing its dominant position. PKP Cargo, the Polish market leader for transporting goods by rail, was fined PLN 20 million (c. • 4.8 million) and ordered to discontinue applying such terms and conditions.

PKP Cargo appealed unsuccessfully at every stage. In June 2007, the Court of Competition and Consumer Protection ruled that the decision be immediately enforceable. Although PKP Cargo did not apply the terms and conditions to any new long-term contracts, it failed to amend its existing contracts, the last of which only expired at the end of 2011.

Therefore, for still abusing its dominant position by differentiating its contractors unlawfully, despite the enforceable decision issued by the President of UOKiK, PKP Cargo was fined PLN 1.7 million (• 404,265).

Source: <http://www.mondaq.com/article.asp>, 6 August 2012

- the undertaking acquires or takes over, on a temporary basis, stocks and shares with a view to securing debts;
- the concentration arises as an effect of insolvency proceedings; and
- entrepreneurs intending to concentrate participated in the same capital group.

Other aspects of Polish competition law include the supervision of aid granted by the State, or through State resources in whatever form threatens to distort competition by favouring certain firms or the production of certain goods.

In 2011, the Office of Competition and Consumer Protection has begun legislative work on the amendment of the Act of February 16, 2007 on Competition and Consumer Protection. The newly developed solutions will permit the President of the Office to perform his duties in relation to the protection of competition and consumers in a more effective way.

On June 1st 2011, the new Regulation on the exemption of certain categories of vertical agreements from the prohibition of competition restricting agreements entered into force. This new act is based on the EU legislation but also takes into account the specificity of the Polish market.

The Regulation provides for a more precise definition of what constitutes a system of selective distribution; introduces provisions which apply to vertical agreements concluded within associations of undertakings and contains complementary provisions regarding the method of calculation of the market share of the seller and of the buyer.

Anti Competitive Business Practices

In 2011, UOKiK received 409 notifications, launched 177 explanatory proceedings and 18 antitrust proceedings.⁴

Regulatory Framework

Though the significant market liberalisation has taken place in Poland, it needs to be emphasised that in many sectors dominant position is still kept by state monopolies. Some new laws have also been adopted that concern competition protection in respect to particular sectors of the economy. These are, among others, the Banking Act of August 29, 1997, the Telecommunications Law of July 16, 2004, and the Postal Act of June 12, 2003.

Telecommunications Sector

The electronic communications sector in Poland is currently regulated by the Office for Electronic Communications (Urząd Komunikacji Elektronicznej – UKE) and is governed by the Telecommunications Act of 2004, as amended. Responsibility for policy development resides with the Ministry of Administration and Digitalisation.

While the President of UKE is charged with most of the responsibilities of regulatory implementation under the regulatory framework, the Ministry of Administration and Digitalisation is responsible for market definition for the purposes of market analysis, and for legal acts, including a number of ordinances.

Box 3: Privatisation of the Polish Telecommunication

In July 2000, within the framework of privatisation procedures, 35 percent of shares of Polish Telecommunication were sold to France Telecom. The privatisation contract guaranteed that Polish Telecommunication would keep its monopolistic position on international call market till January 01, 2003, and on inter-city call market till January 01, 2002.

Dominant position in the market has increased the company's value, thus increasing the revenue from privatisation. As a result, the state monopoly has been changed into corporate monopoly. On April 16, 2012, the brand Polish Telecommunication was replaced by the Orange brand.

Up to this date Polish Telecommunication (now Orange) controls almost 69 percent of inter-zone call market and over 53 percent of international calls market.⁶

Box 4: ZMPD Fined For Anticompetitive Behaviour

UOKiK, the Polish competition authority, has fined the Association of International Road Transport Carriers (ZMPD) in Poland for abusing a dominant position in the market for distributing TIR carnets.

ZMPD is a leading organisation in the Polish road transport market and the only distributor of TIR carnets in Poland. TIR carnets facilitate the international carriage of goods by road transport and enable the carriers to drive across several countries without being subject to customs control.

UOKiK found that ZMPD had abused its dominant position in the market by charging lower rates for TIR carnets to its own members. It ruled that the difference in rates had no objective justification and that it created unequal conditions of competition.

The practice lasted for 10 years until October 2011, when ZMPD introduced an equal rate for all carriers. The fact that it had ended the anticompetitive behaviour was a mitigating factor, leading UOKiK to impose a relatively low fine of PLN 53,752 (c. EUR 13,000).

Source: <http://www.mondaq.com/article.asp>, 2 August 2012

Energy Sector

In September 1996, Poland's Cabinet approved new guidelines for implementing reforms in the energy sector. The objective was to create a competitive energy market

Box 5: STOEN's action to intimidate the consumers

At the end of 2003, the President of the UOKiK received signals, that STOEN S.A – Warsaw provider of electric energy – is placing specific information on the back of electricity bills (invoices). This information concerned the possibility of suspension of energy provisions due to recipients' debt, without any warning.

After reading such message the energy recipient could think, that if energy provision is not paid for on time, it may be immediately suspended – even one or two days after the payment deadline on the electricity bill. However, in view of the Energy Act⁵, such action of the energy provider is illegal.

So, the STOEN's actions were considered as an abuse of dominant position and as an attempt to intimidate the consumers. The President of the UOKiK stated that STOEN S.A has violated consumers' collective interest by violating the obligation to give reliable, true and full information.

Source: *Office Journal of the UOKiK*, No. 3/2004

through the privatisation of the energy industry, and to attract the investment necessary for industrial modernization and environmental protection.

Poland's new energy law went into effect in December 1997. The Act of April 10, 1997 on Energy Law provided the President of the Energy Regulatory Office for the realisation of tasks in the scope of fuel and energy management control as well as promotion of competition. Moreover, under the new law, large electricity users [over 40 Gigawatt-hours (GWh) annually] were able negotiate directly with generators of power.

Further, on June 14, 2000, various amendments to the Energy Act went into effect, with the intent to make energy markets work on a more transparent and business-like basis.

Consumer Protection

There are two paths of consumer protection enforcement in Poland. The Office of Competition and Consumer Protection (UOKiK), as a central government administration body responsible for implementing the consumer protection policy and acting in public interest, initiates administrative proceedings concerning infringements of the collective consumer interests. On the other hand, an individual consumer seeking redress to his/her claims may obtain free legal assistance from a local consumer ombudsman or a non-governmental consumer organisation, choose mediation or arbitration (ADR – Alternative Dispute Resolution) or even file a court action.

The most important Acts/laws are:

- Act of February 16, 2007 on competition and consumer protection (Journal of Laws of 2007, No. 50, item 331)
- Act of July 27, 2002 on specific terms and conditions of consumer sale and amendments to the Civil Code (O. J. No. 141, item 1176)
- Act of March 02, 2000 on protection of particular consumer rights and on product liability (Office Journal No. 22, item 271)
- The Law of August 29, 1997 – Banking Law (O. J. No 140, item 939 with subsequent changes)
- Law of May 12, 2011, on consumer credit (Journal of Laws, No 126, item 715)

The Act of February 16, 2007 on competition and consumer protection (Journal of Laws of 2007, No. 50, item 331) enumerates three examples of practices infringing collective consumer interests:

- application of standard contract terms that have been entered in the Register of Prohibited Clauses;
- providing consumers with inaccurate, false or incomplete information; and
- unfair or misleading advertising, and other acts of unfair competition prejudicial to collective consumer interest.

Consumers in Poland may look for help and legal advice towards NGOs: Association of Polish Consumers and Consumers' Federation, as well as the offices of over 360 local consumer ombudsmen. Tasks of those institutions are determined in the Act on Competition and Consumer Protection.

Box 6: PLN 1.5 million penalty for an energy trading company

The President of ERO issued a decision on imposing a PLN 1,500,000 penalty on PGE Obrót S.A. energy company for using its and "PGE Dystrybucja SA" tariffs not in accordance with their terms and conditions.

The company violated the law provisions by using settlement periods inconsistent with the "PGE Dystrybucja SA" tariff in settlements with its customers, and incorrect settlements due to the fixed component of transmission fee and service charge, when the rates were changed during the settlement period. Consequently, the customers incurred unjustified costs.

In the course of administrative proceedings, the company was asked to provide explanation and send case-related documents regarding settlement periods for specific customers from particular tariff groups, covering the years 2008-2011.

Making his decision on the penalty, the President of ERO

has expressly stated that by entering into a common service agreement, an energy trading company is responsible for both sale and supply of electricity. This clearly defined and absolute obligation was imposed on energy companies that render a comprehensive service under Article 5, item 5 of the tariff regulation. When a customer and an energy trading company enter into a common service agreement, customer's claims are put forward to the seller.

Having completed the administrative proceeding, and taking into consideration the customers' interest and respect for the market participants' rights, the President imposed a penalty on PGE Obrót S.A. under the Energy Law Act.

When setting the penalty amount, under the Energy Law Act, the President of ERO took into account, apart from the degree of fault, also its harmfulness, the company's behaviour so far and its financial capacity.

Source: <http://www.ure.gov.pl>, October 17, 2012

Consumer organisations in Poland are entitled to:

- expressing opinion on the draft legal acts and other documents concerning rights and interests of consumers;
- elaborating and disseminating consumer educational programmes;
- performing tests of products and services and publishing their results;
- editing periodicals, research studies, folders and leaflets;
- providing free-of-charge consumer advisory services and assistance in handling consumer claims;
- participating in works on standardisation; and
- implementing government tasks in the field of competition protection, commissioned to them by the central government and self government administration bodies.⁷

The main tasks of the local consumer ombudsmen are providing free of charge consumer advice and legal information, as well as addressing entrepreneurs in cases pertaining protection of consumer rights and interests. They

can also bring an action on consumers' behalf and join lawsuits in cases pertaining to protection of consumer interests.

Concluding Observation and Future Scenario

Polish competition protection legislation is efficient and its enforcement mechanisms function satisfactorily.

The role of the UOKIK increased after Poland's accession to the EU. The Office took over large part of the EC competencies, especially in respect to the competition law. After the EU accession, all public aid has to be reported to the EC. The Commission then verifies, whether a particular kind of aid is allowed or not. The competence of UOKIK has been broadened to include the selection of public aid applications.

It is expected, that in medium and long term, the EU accession will also bring an increase of competition in those sectors, in which state monopolies were operating – energy services, postal services, railway transport. Few months after the accession, the increase of competition in the air flights sector was already observed.

The current system of consumer protection is coherent and comprehensive. The Competition Act plays a special role in this system. The instruments that the Act provides are tailored to combating the most harmful anti-consumer practices: the practices of enterprises operating on markets where competition is restricted (the prohibition of competition-restricting practices harming consumer interests) or practices infringing collective consumer interests, and hence having a larger impact than those directed at individual consumers.

Overall, the Competition Act adopted a highly repressive system of sanctions, whose aim is both to prevent and to repress. The effectiveness of the Competition Act as an instrument combating anti-consumer practices will depend on the sanctioning policy implemented by the President of the Office of Competition and Consumer Protection, which should both be balanced and ensuring, at the same time, effective application of law.

Box 8: Collective interests of consumers

The President of the Office of Competition and Consumer Protection in its decision of June 20, 2012 no. RPZ 11/2012 ruled that the Polish company Creative Team S.A. infringed on collective interests of consumers, by posting in newspaper advertisements that concerned a dedicated interactive game for mobile phones entitled "Tank War", of information suggesting a possible free use of that game, while free was just sending a text message to a specified number in order to download this application, and using it in a specific mode.

The President decided that such actions were inconsistent with the provisions of the Polish Act of February 16, 2007 on Protection of Competition and Consumers.

Source: Polish IT & IP Law News, 27 July 2012

Endnotes

- 1 www.cia.gov
- 2 The Act of 28 January 1987 on Counteracting Monopolistic Practices in National Economy (Office Journal No. 3, item 18)
- 3 The Act of February 24, 1990 on Counteracting Monopolistic Practices (Office Journal No. 14, item 88)
- 4 OECD Report on Competition Policy & Law in Poland, 2011
- 5 The Act of 10 April 1997 – Energy Act (Office Journal No. 54, item 348)
- 6 Report on the state of telecommunications market in 2011, Office of Telecommunications and Post Regulation, Warsaw, June 2012
- 7 Act of 16 February 2007 on Competition and Consumer Protection (Office Journal No. 50, item 331)

Suggested Readings

- 1) 2nd Report on Monitoring of EU Candidate Countries (Telecommunication Sector), ECSC-EC-EAEC, Brussels-Luxembourg (2002), 16 Dec. 2002
- 2) E. ?etowska, Prawo umow konsumenckich (Consumer contract law), Published by C.H. Beck, 2nd edition
- 3) National Report on the Impact of Trade Liberalisation on Consumers in Poland, by Association of Polish Consumers as part of the Consumers and Global Market Programme, Consumers International, 2001
- 4) Polish Telecommunication Sector, the Report by A. Zo?nowski and W. Szymczak, Market Analyses Department, UOKIK, Warsaw, January 2003
- 5) Office Journal of the Office for Competition and Consumer Protection, No. 1/2003, Warsaw, February 2003
- 6) Office Journal of the Office for Competition and Consumer Protection, No. 3/2004, Warsaw, May 2004
- 7) Report on the 2003 Activity of the Office for Competition and Consumer Protection, Warsaw 2004
- 8) Report on the 2004 Activity of the Office for Competition and Consumer Protection, Warsaw 2005
- 9) Report on the State of Telecommunications Market in 2004, Office of Telecommunications and Post Regulation, Warsaw, 2005
- 10) Changes in Competition Policy Over the Last Two Decades

Legal acts

- 1) Act of 15 December 2000 on Competition and Consumer Protection (Office Journal No.86, item 804)
- 2) Act of 16 February 2007 on Competition and Consumer Protection
- 3) Act of 16 April 1993 on Combating Unfair Competition (Office Journal No. 153, item 1503)

Statistical data

- 1) World Development Indicators 2011 (<http://www.worldbank.org/data>)
- 2) CIA World Factbook 2003 (<http://www.cia.gov/cia/publications/factbook>)
- 3) Human Development Report 2010 (<http://hdr.undp.org/reports/global/2004>)
- 4) Economic Freedom of the World Report 2004 (<http://www.freetheworld.com/release.html>)