

INTRODUCTION TO POLISH COMPETENCE LAW WITH THE PERSPECTIVE OF AGRO-ALIMENTARY SECTOR

INTRODUCCIÓN AL DERECHO DE LA COMPETENCIA POLACA DE LA PERSPECTIVA DEL SECTOR AGRO-ALIMENTARIO

KRZYSZTOF RÓŻAŃSKI*

Recibido: 1/10/2015
Aceptado: 20/06/2016

Summary: I. CHARACTERISTICS OF POLISH COMPETITION LAW II. REGULATION IN THE CONSTITUTION III. BASIC RULES OF COMPETITION LAW IV. PROVISIONS RELATING TO COMPETITION-RESTRICTING PRACTICES V. CONTROL OF CONCENTRATION. VI. STATE AID. VII. AUTHORITIES COMPETENT IN MATTERS RELATED TO COMPETITION VIII. CONCLUSIONS

Sumario: I. CARACTERÍSTICAS DE LA LEY DE COMPETENCIA POLACA, II. LAS REGLAS BÁSICAS DEL DERECHO DE LA COMPETENCIA III. REGULACIÓN EN LA CONSTITUCIÓN III. REGLAS BÁSICAS DE DERECHO DE LA COMPETENCIA IV. DISPOSICIONES RELATIVAS A LAS PRÁCTICAS RESTRICTIVAS DE LA COMPETENCIA V. CONTROL DE LA CONCENTRACIÓN. VI. LA AYUDA PÚBLICA. VII. LAS AUTORIDADES COMPETENTES EN ASUNTOS RELACIONADOS CON LA COMPETENCIA VIII. CONCLUSIONES

Abstract. The Article outlines some basic ideas concerning the principles of the Polish competition law. The competition in Poland is protected, however, it shall be taken into account that the Polish and European Union competition law are not fully unified. On the one hand the European law is more oriented on realization of the integration goals of Treaty establishing the European Community, such as developing the Internal Market. On the other hand the Polish law concentrates more on regulating the competence on Polish territory even if it does not contain sense from the perspective of Internal Market.

The Regulation of the Polish competition law is determined by two acts: Act of 16 February 2007 on competition and consumer protection, The Act of 23 August 2007 on combating unfair commercial practices. These statues regulate i.a. the competition restricting practices, the control of concentration, and the authorities competent in matters related to competition such as Office of Competition and Consumer Protection. It is vital to mention the Act of 30 April 2004 on the procedural issues concerning state

* Licenciado en Ciencias Políticas y Derecho de la Universidad de Adam Mickiewicz en Poznan, Polonia; actualmente cursa programa de doctorado en el Departamento de Derecho Rural, Alimentario y Protección del Medioambiente de la Universidad de Adam Mickiewicz de Poznań, Polonia; becario del Programa Erasmus + en la Universidad de Jaén, España; Investigador en el campo del Derecho Agroalimentario y Mercantil en la Universidad de Jaén y la Universidad de Málaga, especialista en comercio internacional, derecho civil y mercantil y derecho agroalimentario.

aid regulates the issue of granting this kind of help to the people by state, which on certain condition is possible, such as the flood.

Keywords. Polish competition law, competition-restricting practices, control of concentration, state aid with the perspective from agro-alimentary sector, Act of 16 February 2007 on competition and consumer protection, The Act of 23 August 2007 on combating unfair commercial practices

Resumen. Se perfilan en este artículo algunas ideas básicas sobre los principios de la ley de competencia polaca. La competencia en Polonia está protegida, aunque hay que tener en cuenta que la ley de competencia de la Unión Europea y de Polonia y no son totalmente unificadas. Por un lado la legislación Europea está más orientado a la realización de los objetivos de integración de Tratado Constitutivo de la Comunidad Europea, tales como el desarrollo del mercado interior. Por otro lado la ley polaca se concentra más en la regulación de la competencia en el territorio polaco, incluso si no contiene sentido desde la perspectiva del mercado interior.

La regulación de la ley de competencia polaca está determinada por dos actos: Ley de 16 de febrero de 2007 sobre la competencia y protección del consumidor, la Ley de 23 de agosto de 2007 sobre la reacción contra las prácticas comerciales desleales. Estas estatuas regulan i.a. las prácticas restrictivas de la competencia, el control de la concentración, y las autoridades competentes en asuntos relacionados con la competencia, como la Oficina de la Competencia y Protección del Consumidor. Es importante mencionar sobre la Ley de 30 de abril de 2004 sobre las cuestiones de procedimiento relativas a las ayudas estatales regula el tema de la concesión de este tipo de ayuda a la población por estado, que en ciertas condiciones es posible, como por ejemplo la inundación.

Palabras clave. Derecho de la competencia polaca, prácticas restrictivas de la competencia, control de la concentración, la ayuda pública de la perspectiva del sector agro-alimentario, Ley de 16 de febrero de 2007 de protección de la competencia y de los consumidores, Ley de 23 de agosto de 2007 de la reacción contra las prácticas desleales del mercado

INTRODUCTION

Reflections on the Polish Competition Law shall be preceded by defining the concept of 'competition' without which it is hardly possible to imagine the functioning of this rapidly expanding branch of law. In the relevant literature this concept is recognized as a 'process of rivalry between entrepreneurs designed to achieve specific economic goals from sales of goods and services, leading to an increase in production or sales, lower prices, technical progress and meeting the needs of the consumer'¹. In the Supreme

¹ S. GRABOWSKI, *Ustawodawstwo antymonopolowe*, Publication: Wolters Kluwer Polska, Warsaw, 1999, p. 28.

Court jurisprudence competition is identified with a rivalry between at least two entities in pursuit of the same goal, which entities at the same time take action intended to gain an advantage of each other². It is essential to mention that researchers have distinguished various types of competition, such as static and dynamic competition³.

Apart from various types of competition it shall be emphasized that, competition shall be based on the model of perfect competition in which: entrepreneurs can freely enter the market or to exit it without additional costs, goods are homogeneous and purchasers are very well familiarized with an offer. In this kind of situation, neither the seller nor the purchaser have an opportunity to influence on the price on their own: they are so numerous that it is impossible to achieve this kind of goal. However, it shall be emphasized that the perfect competition model does not exist in practice, due to many reasons. Firstly the costs of entrance on the market or exit from it are high. Secondly the goods are not homogenous, and thirdly the purchaser are not well familiarized with the offers⁴. In practice we are dealing with imperfect competition which is called 'workable competition'. This term shall be understood as a competition that can be achieved under these conditions that exist in a given market..

According to Professor M. Kępiński there is a possibility that current kind of competition may get closer to the perfect competition model only on condition that the market will present relatively large number of operators on the demand side and the supply side. It is vital to mention that relatively low costs of entering the market are more favorable to a competitive market structure⁵. There is no clear limit which allows

² Judgement of the Supreme Court from 20th of May 1991, II CR 445/90, LEX number: 9055.

³ Static competition is a market condition in which there is optimum distribution of the means of production, allowing to fulfill and satisfy demand when incurring the lowest possible manufacturing costs. With this model, of competition, the consumer receives a product or service after the lowest possible price. Such conditions are possible to meet in the so-called state of perfect competition. It occurs when: 1) there is a large number of buyers and sellers who operate in the market independently of each other and none of them has a significant market share; 2) competing sellers offer homogeneous goods; 3) the market is transparent in the sense that sellers and buyers well aware of the prices; 4) there are no barriers to entry or exit from the market, allowing you to flip resources where they can best be used. The perfect competition model is in fact the implementation of certain socially desirable goals that it assumes. It aims generally to improve the welfare of consumers who receive (on condition that this type of competence exists) goods or services at the lowest cost and socially attainable prices.

Meanwhile, dynamic competition aims to achieve a high degree of economic efficiency, and what goes with it - a high level of innovation. In this perspective, competition is a continuous process based on technological progress. As a result, competitors enter the market more and more new goods and services, trying to meet the needs of customers and consumers. In this way also it increases the prosperity of society. In this concept of competition the emphasis lay on the efficiency of entrepreneurs who can use their technical superiority to strengthen its market position. Such an efficient trader can confirm his superiority by reaching even a dominant position or a monopoly. This position, obtained by the natural development of the company, is economically justified and should not be subject to activities aimed at weakening it.; M. M. DABBAH, *International and Comparative Competition Law*, s. 20–21, D. MIĄSIK, *Stosunek prawa ochrony konkurencji*, Publication: Wolters Kluwer Polska, Warsaw 2012, s. 85–90; R. SIKORSKI, *Funkcjonowanie zasobów patentowych w prawie konkurencji Unii Europejskiej*, Publication: C. H. Beck, Warsaw, 2013, s. 141–142, 221–234.

⁴ M. KĘPIŃSKI, *System Prawa Prywatnego: tom 15 – Prawo konkurencji*, CH BECK, Warsaw, 2013, p. 6.

⁵ *Ibidem.*, p. 7

to determine whether the analyzed market is still true competition, whether it is already oligopolistic market, or even monopolistic market. It is important task for the authorities to try to express in their decisions the tendency to maintain a maximum competitive structure of the market which is currently possible.

The competition law constitutes the branch of law which try to meet all of abovementioned requirements. It is generally believed that the purpose of this branch of the law is to ensure consumers welfare by maintaining a competitive market structure as a mechanism for ensuring both the socially optimal distribution of means of production and at the same time influencing on the price and supply of goods and services offered⁶. Such a market is generally considered to be more economically efficient than the market based on central planning, state ownership of the means of production, and general economic regulation by the state.

I. CHARACTERISTICS OF POLISH COMPETITION LAW

It is essential to mention that competition law sometimes is named differently between various systems of law. In the USA for instance it is called antitrust law, while in Poland competition law or law of protection of competition⁷. The scope of that law includes therefore, prohibitions on certain market practices between competitors (the horizontal restraints on competition, eg. a price cartel), practices occurring in systems of distribution (vertical restraints on competition, eg. the market split up, imposition the prices of resale), prohibitions of certain market activities of entrepreneurs with a monopoly or dominant position, a control of concentration between entrepreneurs and finally control of state aid which provided by the state to the entrepreneurs⁸.

There is no doubt that such understood competition law in Poland is regulated both at the national level as well as at the European Union level⁹. In the latter case we are dealing either with the provisions of the Treaty on the Functioning of the European Union (hereinafter referred to as 'TFEU')¹⁰, as well as with the provisions of the secondary legislation in the form of regulations and rules of interpretation of a soft law.

⁶The concept of 'consumer welfare' is not clearly defined and generally means that consumers can satisfy their needs optimally at a given stage of technological development; R. H. BORK, *The Antitrust Paradox*, Publication Free Press, New York, 1993, p. 90

⁷R. A. Posner, *Antitrust Law*, The University of Chicago Press, London, 2001.

⁸The scope of the Polish competition law is generally speaking determined by two acts: Act of 16 February 2007

on competition and consumer protection (Polish Journal of Laws of 2007, No. 50, item 331) and The Act of 23 August 2007 on combating unfair commercial practices (Journal of Laws No. 171 of 2007, item 1206).

⁹D. MIĄSIK, *Międzynarodowe i europejskie prawo konkurencji*; Publication: CH Beck, 2013, Journal: *Studia Prawa Prywatnego* number 2/2013, p. 27-28.

¹⁰Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

EU rules and TFEU and the provisions of the regulations are in force in our state with regard to situations in which the effects of market activities of entrepreneurs exceed or reach beyond the borders of our country. This area of EU law is called competition law), without any accompanying adjectives.

The second division of competition law is called the law of combating unfair commercial practices or, in short, the law of unfair competition. This section of law applies in cases where competition exists, but without proper regulation it can lead to socially harmful situations. In its general scope it includes: specific cases of unfair competition consisting in misleading of characteristics of an entrepreneur or characteristics of goods and services or activities of a competitor, misleading consumers by false information about their goods and services, spreading false information about a competitor or conducting unfair forms of advertising¹¹.

Both sections of competition law also belong to different branches of law. Competition law (antitrust) law should be considered to consist a part of public law¹². It is determined by the way in which they are prosecuted infringements of competition law. The competent authority in this field constitutes Office of Competition and Consumer Protection (hereinafter referred to as 'OCCP'), which in administrative proceedings determines whether an infringement of competition law took place¹³. This office also issues decisions stating an infringement of competition law with the relevant orders to discontinue such infringements. In cases relating to concentration, decisions to consent to the concentration or to prohibit the concentration are issued ex ante, making it easier for entrepreneurs to obtain assurance as to the fact that the proposed transaction does not conflict with the law. Appeals against the President's decision shall be imposed to the Court of Competition and Consumer Protection.

On the other hand the unfair competition law should generally be considered as a part of private law¹⁴. The provisions of the Act includes the regulation of torts and prosecution of infringements of fair competition which shall be enforced by means of private law. Only in matters concerning the protection of the collective interests of consumers, it is possible conduct of administrative proceedings by the President of the OCCP in order to consider certain practices of entrepreneurs as infringing the collective consumer interests¹⁵.

II. REGULATION IN THE CONSTITUTION

¹¹ See more: The Act of 23 August 2007 on combating unfair commercial practices (Journal of Laws No. 171 of 2007, item 1206).

¹² D, MIĄSIK in: M. KĘPIŃSKI (red), System Prawa Prywatnego: tom 15 – Prawo konkurencji, CH BECK, Warsaw, 2013, p. 62-65.

¹³ See more: Title V: Organisation of competition and consumer protection of Act of 16 February 2007 on competition and consumer protection (Polish Journal of Laws of 2007, No. 50, item 331).

¹⁴ J. SZWAJA (red), Ustawa o zwalczaniu nieuczciwej konkurencji - Komentarz, CH Beck, Warsaw, 2013, s. 69.

¹⁵ Article 24, paragraph 2, point 3 of the Act of 16 February 2007 on competition and consumer protection.

The Constitution of Poland¹⁶ (hereinafter referred to as 'the Constitution') does not mention directly the principle of freedom of competition or the principle of protection of market competition. However, these principles are widely regarded as resulting indirectly from the provisions of the Constitution¹⁷. It is essential to mention the Art. 20 of the Constitution, formulating the principle of a social market economy which constitutes the basis of Poland's economic system. The social market economy is an economic system in which the state acts as an judge and intervenes in the market only when it is necessary for the performance of certain social tasks, which the mechanisms of free competition may not realize¹⁸. The basis for Polish economic growth shall constitute the market-based mechanisms which the State can influence only to the extent provided by laws for the implementation of these tasks.

It is vital to mention that the social market economy is based on the principle of freedom of economic activity, private ownership and solidarity and cooperation between social partners¹⁹. Freedom of establishment signify the freedom to take up and pursue that activity in a chosen forms. These activities can be conducted by all entities entitled to conduct economic activity, regardless of whether we include them into the category of public or private entity²⁰. On the other hand the pillar of economic freedom constitutes the freedom of competition the rules specified in the Act of 16 February 2007 on Competition and Consumer Protection. This principle is also linked to the principle of protection of property (Art. 21 of the Constitution), which includes all forms and types of ownership, with the most important significance of a private property.

III. BASIC RULES OF COMPETITION LAW

The Law on Competition and Consumer Protection dated 16 February 2007 is the basic act on the basis of which a control of anti-competitive agreements between undertakings, abuse of their dominant position and concentrations made by them is being carried out. The Act sets out the main principles of Polish antitrust rules, which include: prohibition on restrictive business practices - agreements whose object or effect is to eliminate, limit or any other infringement of competition and prohibiting abuses of dominant position; preventive concentration control, in order to reduce the risk of the transaction is concluded, which can cause a significant restriction of competition. Other issues Polish competition law concerns are related to the supervision of state aid granted

¹⁶ The Constitution of the Republic of Poland of 2nd April, 1997 (Journal of Laws 1997, no. 78, item 483).

¹⁷ L. GARLICKI, *Polskie prawo konstytucyjne - zarys wykładu*, Publication: K. E. Liber, Warsaw, 2007, p. 75-77; B. BANASZAK, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Publication: C. H. Beck, Warsaw, 2012, p. 155-165.

¹⁸ See more: art. 65 par.. 5, art. 68 par. 5, art. 74, 76 of the Constitution of the Republic of Poland of 2nd April, 1997.

¹⁹ Z. WITKOWSKI, *Prawo konstytucyjne*, Publication: TNOIK Toruń, Toruń, 2006, s. 103.

²⁰ B. BANASZAK, *op. cit.* p. 163.

by the State or public funds, which, in any form may lead to a distortion of competition by favoring certain undertakings or the production of certain goods.

The structure of the Act consists of 138 articles, grouped in chapters from I to IX. Section I (Art. 1-5) defines the scope of the matters which are in it regulated, territorial applicability and contains a glossary of legal definitions and rules defining the relations between the Act with other relevant legislation. In Section II (Art. 6-12) are regulated provisions related to the prohibition practices restricting competition, the legal basis for the issuing of block exemptions and regulations concerning substantive Presidents of OCCP decisions closing proceedings for infringement of the prohibition. The provisions of Section III (Art. 13-23 in two chapters) concern the control of concentration. Section IV (Art. 24-28, two chapters) regulates the issue of practices infringing collective consumer interests.

It is vital to mention of the importance of section V (Art. 29-46, and two chapters) titled: 'Organization of competition and consumer protection' which includes provisions concerning the organization of the authority of protection of competence and consumers (Art. 29-36), and tasks of local government and consumer organizations in the field of consumer protection and the way of their execution (Art. 37-46). The most extensive is the Section VI (Art. 47-1038, five chapters), including provisions relating to proceedings before the President of the OCCP. In part VII (Art. 106-113) are set out the rules concerning the penalties and the leniency program. The Act closes with the provisions of Section IX which relate to the procedure of changing, transitional and final provisions.

IV. THE PROVISIONS RELATING TO COMPETITION-RESTRICTING PRACTICES

In the Polish legal system, the rules on anti-competitive agreements, along with the rules governing the issue of abuse of a dominant position together constitute a group of rules prohibiting restrictive business practices. Art. 6 of the Act on Protection of Competition prohibits all kinds of agreements (agreements, resolutions, agreements in any form) made between entrepreneurs or associations of undertakings which, though potentially would have the effect of restricting competition. The most common and also the most dangerous for the operation of the market are price agreements in which competing with each other entrepreneurs jointly set prices, thereby causing the loss of the benefits by the consumers which result from price competition between sellers. It shall be emphasized, that among the different types of unlawful agreements - subject to certain exceptions – are the agreements which result in limiting of the production, sales or technical development agreements, agreements limiting the area or circle of clients on which or in which certain entities can organize the process of selling, or agreements restricting market access to other entrepreneurs (discriminatory agreements).

Competition Act also prohibits the abuse of market power, often referred to as 'dominance in the relevant market'. The entrepreneur holds a dominant position if its

economic power enables it to take appropriate action in the market regardless of the reactions of competitors or of intermediate or final consumers. There is a presumption that the share trader who owns of 40 percent of the market has a enough power to occupy the dominant position. By studying the market position of the entrepreneur it should be taken into account, that the totality of economic conditions prevailing in the market.

V. CONTROL OF CONCENTRATION

The control of the concentration is an essential element of the system of competition law. In Poland there is prohibited to make such concentrations which result in significant restriction of the competition in the market, in particular by means of creating or strengthening a dominant position on the market. The procedure for surveillance over transactions leading to the concentration of companies is also governed by the provisions of the Act on Protection of Competition and Consumer. This Act requires for the entrepreneurs to obtain a permission for some concentrations of significant size. The obligation to notify a concentration concerns:

the intention to merge two or more independent undertakings, take control of one or more enterprises, the creation of a joint venture or the acquisition of part of the assets of another undertaking.

However, this obligation does not apply if the turnover achieved by the company over which control is going to be acquired or the turnover generated by the purchased assets did not exceed the Polish territory 10 million, in either of the last two years before the process of notification. The transactions of mergers and the creation of a joint venture in which none of the participants did not reach Poland in the last two years before the notification of 10 million Euro turnover, also are not subject to notification.

The obligation to notify a concentration applies to all entrepreneurs whose total global turnover exceeded in the year prior to notification the equivalent of 1 billion euros, or whose total turnover in Poland exceeded EUR 50 million. Such concentrations must be notified to the President of the Office of Competition and Consumer Protection, whose approval is necessary to complete the transaction. This means that traders shall not make a merger before obtaining a positive decision of the President of the Office of Competition and Consumer Protection or within one month of the date of filing, if the President has not delivered within that period any decision. Monthly deadline for issuing a decision may be extended for a further four months in particularly complex cases. It shall be taken into consideration that the term during which the President of the Office of Competition and Consumer Protection shall issue a decision, does not include periods for the removal of formal or supplement the information which enterprises are obliged to supplement the applicant planned concentration. For failing to notify the transactions or to provide within the declaration false or misleading information it is possible to impose the financial penalties.

From the decision of the President of the Office Either party may appeal to the court (the Court of Competition and Consumer Protection). Polish regulations on the control of concentrations, while complying with the Community rules may, however regulate the circumstances of the obligation to notify a concentration more rigorously than it does the relevant Community rule. Consequently, the recognition by the competent authority of the European Union (the European Commission) that the concentration does not require notification, is not synonymous with the exemption of the duty to notify a concentration before the CCP.

VI. STATE AID

Firstly, it shall be mentioned that the Treaty on the Functioning of the European Union (article 107) prohibits aid granted by State authorities or the public in any form whatsoever which distorts or may distort competition by favoring certain undertakings or the production of certain goods. This article was established because by means of preferential treatment to selected entrepreneurs at the expense of other businesses or assets, public aid may have seriously disrupted normal activity of the competition in the market. In Poland the public aid and the requirements which shall be fulfilled in order to receive it are constituted in the Act of 30 April 2004 on the procedural issues concerning state aid²¹. According to its provisions the aid can take many forms, including such as: state subsidies, exemptions from charges of a public nature, the Treasury guarantees and the supply of goods or services on the part of state entities on preferential terms.

Polish competition law, however, allows exceptions to the prohibition on state aid, on condition that the proposed support system complies with the conditions laid in Act of 30 April 2004 on the procedural issues concerning state aid and the relevant Community legislation. For example, it is permissible to assist an aid of social character granted to individual consumers, as well as aid which aims to redress the damage caused by natural disasters or exceptional occurrences. In terms of public aid to the agro-alimentary sector it shall be emphasized that in Poland recently has been adopted the Aid Program 2015 -2020 offering various type of aid to the farmers, who e.g suffered due to the floods²². The public aid sector for the farmers is very well developed on the European Union Level²³.

VII. AUTHORITIES COMPETENT IN MATTERS RELATED TO COMPETITION

²¹ Act of 30 April 2004 on the procedural issues concerning state aid (Journal of Laws of 2004, No. 123, item 1291).

²² The official website of Polish Ministry of Agriculture: <https://bip.minrol.gov.pl/Pomoc-publiczna-w-rolnictwie/Programy-Pomocy-2015-2020> (access on 30 of March).

²³ The official website of state aid in EU: http://ec.europa.eu/competition/state_aid/register/ (access on 4 of April).

Control over compliance with the Law on Protection of Competition is conducted by the President of the Office of Competition and Consumer Protection ("President of the Office"), which is the central body of the government administration. The decisions and guidelines of the President of the Office, as well as court rulings issued in cases of appeals against its decisions may be published in the Official Journal of the Office of Competition and Consumer Protection ("OCCP"). Both the decisions and guidelines of the President of the Authority are available on the website of the OCCP²⁴.

Decisions of the President of the Office of the penalties also can be appealed to the Court of Competition and Consumer Protection. Fines are the income of the state budget and are subject to collection under the provisions on administrative enforcement proceedings. The authority dealing with appeals against administrative decisions issued by the President in matters of competition law is a separate organizational unit in the Regional Court in Warsaw (the Court of Competition and Consumer Protection). Appeals must be submitted, through the President Office within one month of receipt of the decision. Appeal proceedings pending in a special procedure specified in the Code of Civil Procedure. The appeal form judgment of the Court of Competition and Consumer Protection may be imposed to the Warsaw Court of Appeal (Civil Division), and shall be paid through the Court of Competition and Consumer Protection within two weeks of notification of the judgment. Parties to the appeal proceedings shall be entitled to lodge a cassation appeal against the judgment of the Court of Appeal to the Supreme Court regardless of the value of the disputed, within 2 months from the date of service of the decision which is the subject of appeal.

The President of Office of Competition and Consumer Protection may impose a fine on an enterprise which was found to have used competition restricting practices or to have infringed collective consumer interests. The amount of the fine for - even unintentional - violation of the provisions of the Act of 16 February 2007 on competition and consumer protection (e.g. participating in a cartel, abusing a dominant market position, carrying out a concentration without prior clearance from the President of the Office or infringing collective consumer interests) may not exceed 10% of the undertaking's revenue in the preceding financial year.

It is also possible to impose a fine in a situation when an undertaking has provided, even unintentionally, false data in the application for concentration clearance, has not provided any information when requested to do so by the Office, provided false or misleading information or has not cooperated with the OCCP during the investigation. The amount of the fine may in such a case reach up to EUR 50 million. Also, a fine equivalent to up to EUR 10,000 may be imposed for each day of delay in implementing the decisions based on the provisions of the Act on competition and consumer protection and legally binding court judgements. By way of decision, the President of the Office may also impose a fine amounting to fifty times the average remuneration on the manager or a member of the management body of an undertaking or an association of undertakings, if this person, deliberately or undeliberately has not implemented the

²⁴ The official web site of OCCEP: www.uokik.gov.pl (access on 27 of March).

decisions or resolutions of the President of the Office, binding court judgements, has not reported an intention to concentrate, or has not provided the information or provided unreliable or misleading information when requested by the President of the Office. In addition, the Competition Act provides for penalties which may be imposed by the President on a person holding a managerial position or being a member of the management body undertaking or association of entrepreneurs (up to fifty times the average wage) for violation of procedural provisions of the Act on Protection of Competition (eg. For not implementation of the decision or not information). Moreover, a fine of up to 2 million at risk are the management company which, through its action or omission committed with intent to enter into an illegal agreement restricting competition.

VIII. CONCLUSIONS

It is essential to bear in mind that in Poland function The European Union's regulation and national regulation on competition, which generally speaking are supplementing each other. Both of acts: Act of 16 February 2007 on competition and consumer protection and The Act of 23 August 2007 on combating unfair commercial practices. protection of competition are effective, and had introduced control mechanisms function in a satisfactory manner. The Act on competition and consumer protection is subject to regular changes, which are aimed at further strengthening the effectiveness of the Polish competition authorities, as exemplified by the recent introduction of penalties for individuals who have committed to enter into an illegal agreement restricting competition.

Fecha de recepción en la REJ 1/10/2015
Fecha de aceptación por la REJ 20/06/2016