

– Tomasz Odziemczyk[†]

Poland is the largest country in Central-Eastern Europe with over 38 million inhabitants. After overthrowing communism in 1989, Poland started transition towards 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 EU 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 have 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 66 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.

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 Economy¹. The Act was only a temporary solution, however, for the first time in the post-war history of Poland.

In February 1990, in the beginning of a transformation period, the parliament enacted The Act on Counteracting Monopolistic Practices (The Antimonopoly Act)². 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:

PROFILE	
Population:	38.2 million***
GDP (Current US\$):	209.6 billion***
Per Capita Income: (Current US\$)	5,280 (Atlas method)*** 10,560 (at PPP)**
Surface Area:	312.7 sq. km
Life Expectancy:	73.8 years**
Literacy (%):	99.7 (of ages 15 and above)**
HDI Rank:	37***

Sources:
 - World Development Indicators Database, World Bank, 2004
 - Human Development Report Statistics, UNDP, 2004
 (** For the year 2002
 (*** For the year 2003

- counteracting monopolistic practices;
- analysis of the level of economic concentration;
- consumer rights protection; and
- analysis of goods and services.

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 place in 1996, when the Antimonopoly Office assumed responsibility for consumers' protection policy. The name

* Original paper was submitted in September 2004. Revised in March 2006

1 The Act of 28 January 1987 on Counteracting Monopolistic Practices in National Economy (Office Journal No. 3, item 18)

2 The Act of 24 February 1990 on Counteracting Monopolistic Practices (Office Journal No. 14, item 88)

of the Office was changed into the Office for Competition and Consumer Protection (OCCP).

One of the most important elements of a new policy was establishing the partnership between OCCP 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 OCCP 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 marketing year preceding the year of the notification exceeds certain amount. In accordance with the new law, this turnover limit amounts to •50mn.³

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 •10mn,
- entrepreneurs intending to concentrate participated in the same capital group, and
- combined market share of entrepreneurs intending to concentrate did not exceed 20 percent⁴.

The last condition was removed from the list of exceptions on the first of May 2004 (the date of the EU accession).

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

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

Significant changes to the Polish telecommunications market were introduced in 2000. The parliament enacted Telecommunications Law⁵ and appointed a regulatory body – the Office of Telecommunications Regulation (which was transformed into the Office of Telecommunications and Post Regulation in 2002).

In April 2004, within the harmonisation of Polish and European law, a new Telecommunications Law was enacted.⁶ New regulation strengthened the position of consumers in their relation with operators, as well as made it easier for new telecommunication companies to start business. However, many elements of the new law are yet to be implemented.

Box 89.1: 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.

Up to this date Polish Telecommunication controls almost 80 percent of inter-zone call market and over 72 percent of international calls market.⁷

Anticompetitive Business Practices

In 2004, the OCCP conducted 354 antimonopoly proceedings, of which 295 concerned the abuse of a dominant position.⁸

3 Act of 15 December 2000 on Competition and Consumer Protection (Office Journal No.86 item 804)

4 op. cit.

5 The Act of 21 July 2000 – Telecommunications Law (Office Journal No. 73, item 852)

6 The Act of 16 July 2004 – Telecommunications Law (Office Journal No. 171, item 1800)

7 Report on the state of telecommunications market in 2004, Office of Telecommunications and Post Regulation, Warsaw, 2005

8 Report on the 2004 Activity of the Office for Competition and Consumer Protection, Warsaw 2005

Box 89.2: Polish Television Accused of Restraining Competition

Polish Television (TVP) is the public TV broadcaster with a dominant position in the market. It has the largest number of viewers in Poland. This is due to the fact, that TVP in contrast to its competitors has more than one channel. Furthermore, TVP has the highest technical range of the market (in 2001, 99,3 percent of Poles were technically able to watch TVP Channel 1).

What's worth emphasising is that the potential competitors wishing to enter the market have to obtain the license, which is given by the Chairman of the National Broadcasting Council.

In 2002, private television broadcaster Polsat accused TVP of competition restraining practices. The reason was that TVP decided to give price discounts to advertisers in return of the obligation, that share of their total expenses for advertising in TV channels in their total advertising expenses in all available TV stations will amount to over 50 percent.

This action blocked the main source of competitors' income. (Revenues from selling the advertising time in TV are not the only source of TVP income. TVP is the only broadcaster, who has additional source of financing in the form of TV subscription revenues). The President of the OCCP considered TVP policy as abusing of a dominant position and ordered it to be stopped.

Currently, there is a political debate about possible elimination of the TV subscription, which would result in raising the competition in the TV broadcasters' market. Lack of revenues from TV subscription would force TVP to become more competitive. However, some of the members of the National Broadcasting Council argue, that TVP channels don't have a commercial character in a way, that they are not aimed at mass spectator. Most of the TVP programs are created for and watched by relatively small number of people and revenues from commercials are not sufficient to finance the TVP activity.

Source: Office Journal of the OCCP, No. 1/2003

Consumer Protection

Apart from detailed regulations, which protect consumers' interests by creating healthy competition in the market, there are also many regulations in Poland, which deal directly with the consumer issues.

The most important ones are:

- 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 July 20, 2001, on consumer credit (O. J. No 100, item 1081)

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 advocates (consumer ombudsmen). Tasks

of those institutions are determined in the Act on Competition and Consumer Protection.

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 (...); and
- participating in works on standardisation (...)'⁹.

The main tasks of the local consumer advocates 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.

⁹ Act of 15 December 2000 on Competition and Consumer Protection (Office Journal No. 86, item 804)

Box 89.3: STOEN's Action to Intimidate the Consumers

At the end of 2003, the President of the OCCP 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 written down on the electricity bill. However, in view of the Energy Act¹⁰, 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 OCCP 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 OCCP*, No. 3/2004

Concluding Observations and Future Scenario

The role of the OCCP 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 OCCP 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.

Apart from increasing the competition, the acceleration of privatisation processes has to be introduced. In the framework of implementation of OECD recommendations, the privatisation of Polish State Railways (PKP) and Polish Motor Transport (PKS) is being planned.

10 The Act of 10 April 1997 – Energy Act (Office Journal No. 54, item 348)

Suggested Readings

- 1) 2nd Report on Monitoring of EU Candidate Countries (Telecommunication Sector), ECSC-EC-EAEC, Brussels-Luxembourg (2002), 16 Dec. 2002
- 2) E. Łetowska, 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. Zo³nowski and W. Szymczak, Market Analyses Department, OCCP, 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

Legal acts:

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

Statistical data:

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

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