

## Competition & Compliance Bulletin

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### Contents:

1. Antitrust: Statement of Objections introduced
2. Antitrust: Restriction of Internet sales declared illegal
3. Merger control: Faster proceedings
4. Compliance: 6<sup>th</sup> German-Polish Law and Business Forum

### **1. Antitrust: Statement of Objections introduced**

On 1 September 2015, the Polish Office for Competition and Consumer Protection (“OCCP”) adopted Guidelines (“Guidelines”) on issuing of the Detailed Justification of Charges (“DJC”) in competition law cases. In the OCCP’s view the DJC will become an equivalent of the European Commission’s Statement of Objections.

The Guidelines provide for the OCCP’s obligation to issue the DJC after the OCCP has finalized collecting the evidence. Before adoption of the Guidelines the parties to the proceedings had practically no means of being informed about the OCCP’s antitrust charges. The only document with information in this regard - notice on commencement of the case (“Notice”) - which is sent to the parties immediately after proceedings have been started, cannot be considered to be a reliable source of information in this respect. Firstly, the notice being a formal document is by its nature very brief. Secondly, the notice is issued after proceedings have been started, ie. at a stage where the OCCP has only begun collecting evidence and clearly has not assessed it yet. Given these circumstances the notice only very generally describes the alleged charges and does not contain either reference to evidence or any legal assessment thereof.

DJC aims at changing this situation as it will be issued after the OCCP has finalized collecting the evidence. Thus it will contain all significant facts and references to the evidence along with the OCCP’s legal assessment thereof. After DJC has been delivered to the party, the party will be entitled to reply to it (within at least two weeks’ time), thus potentially engaging into a dialogue with the OCCP. Should new circumstances be discovered after the DJC had been issued – eg. as a result of party’s reply to the DJC – the OCCP will issue a Supplementary DJC.

Despite being soft law and very brief content-wise, the Guidelines and the DJC seem to be an important step in enhancing the undertakings’ rights to defence in the course of proceedings before the OCCP.

An English version of the Guidelines is available at:  
<https://uokik.gov.pl/download.php?plik=16974>

## **2. Antitrust: Restriction of Internet sales declared illegal**

In its decision<sup>1</sup> of 30 June 2015, the OCCP has confirmed that an obligation imposed on “brick-and-mortar” distributors not to sell products via Internet is illegal.

The OCCP’s decision was issued against a Polish limited liability company Investment Trading Consulting (“ITC”), who is a general Polish importer of baby strollers and car seats (“Products”) of the Swedish brand “Emmaljunga”. The case was triggered by information and documents received from one of the sellers of the products, following which the OCCP dawn raided ITC. The proceedings have revealed that ITC and its distributors concluded distribution agreements with a clause preventing the distributors from sales of the products via Internet and per mail-order.

The OCCP concluded that the contractual clause in question aimed at restricting passive sales via Internet as provided for in paragraph 56 of the European Commission’s Guidelines on Vertical Restraints. Further, the OCCP stated that the questioned provision could not be block exempted since it was a blacklisted clause as provided for in § 11(2) and in Art. 4(b) of the Polish and European vertical BER respectively.

The OCCP concluded that it was appropriate to initiate the proceedings against ITC only, as ITC was the leader and organizer of the anticompetitive agreements. However the OCCP abstained from imposing a fine on ITC and accepted ITC’s commitment to change the distribution agreements, so that the distributors would be allowed to sell the products also via Internet.

## **3. Merger control: Faster proceedings**

Following the reform of the Polish competition law, which entered into force on 18 January 2015, the merger control proceedings have been split into Phase I and Phase II. Additionally, the statutory review period under Phase I has been shortened to last 1 month only. As the OCCP reports the reform resulted in faster merger control proceedings. On average the merger control review lasted in 2015 only 27 days while in 2014 it were 67 days. Since introduction of Phase I and Phase II proceedings, so far only 5 merger control notification have been directed into Phase II. This means that the OCCP will have additional 4 months to review the notified concentrations. Still while planning the transaction schedule, one has to bear in mind that requests for information (which “stop the clock”) can be sent out to the parties, both in Phase I and Phase II. Furthermore, the merger control notifications can be reviewed in the longer Phase II, whenever the OCCP plans to initiate a market survey or the intended transaction is particularly complicated.

## **4. Compliance: 6<sup>th</sup> German-Polish Law and Business Forum**

On 5 November 2015, the Warsaw Stock Exchange will host the 6<sup>th</sup> German-Polish Law and Business Forum with the main theme “Compliance: back to the roots”. More details on this compliance event are available at: <http://de.fowirt.org>.

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<sup>1</sup> Case No. RGD 2/2015