

# Kluwer Competition Law Blog

## Main Developments in Competition Law and Policy 2024 – Poland

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### Introduction

With 2024 now in hindsight, it is time to reflect on the developments in the Polish competition law landscape over the past year. It can be summarized as a continuation of activities of the Polish Competition Authority – President of the Office of Competition and Consumer Protection (UOKiK), based on previously developed frameworks, taking into account the changes occurring in the economy and its associated challenges.

In 2024 UOKiK issued 326 merger control decisions and 12 decisions in the area of antitrust. During the same period, the authority conducted 3 inspections (*kontrola*) and 59 searches (*przeszukanie*). UOKiK continued its focus on cartels within the automotive sector (vehicle distribution) and concluded several investigations regarding the abuse of its dominant position. Moreover, UOKiK initiated explanatory proceedings concerning businesses operating in digital markets. The development of these cases is worth monitoring in the future. Detailed information on these topics is provided in the following sections.

UOKiK also issued and revised a series of guidelines addressing key areas such as: merger control, investment control, the imposition of fines, and anti-competitive agreements within the Polish labour market. According to Article 31a of the Act of 16 February 2007 on Competition and Consumer Protection, UOKiK may issue and publish explanations and interpretations that are of significant importance for the application of regulations in matters within UOKiK's jurisdiction. UOKiK's guidelines do not constitute law and are not legally binding. However, their publication indicates that UOKiK intends to adhere to them. Please note that the Anti-Competitive Practices in the Labour Market Guide (described below) does not qualify as guidelines in this context.

### Anti-competitive agreements

The year 2024 did not abound in a substantial number of decisions regarding anti-competitive agreements. UOKiK imposed fines on importers and distributors of passenger cars – KIA and trucks – IVECO, as well as sellers of fuel goods. The price-fixing decisions also included a case involving a pet food distributor, as well as a commitment decision in Dell's case. UOKiK also issued decisions for bid-rigging and imposed fines for providing false and misleading information.

## KIA

From the wording of the decision, it would appear that [the KIA case](#) is a typical example of vertical anti-competitive agreements, involving price fixing and market sharing. The importer provided distributors with price lists and informed them about the maximum available discount levels. Dealers, in turn, adhered to both the provided price lists and the discount levels. The importer ensured compliance through regular inspections to the showrooms and also sent reminders via email. KIA dealers also informed each other if any dealer did not comply with the agreement.

The second aspect of the violation concerns market sharing. According to the agreement, dealers were to sell vehicles only to customers who lived or conducted business in the area closest to their dealership. If a customer from another region approached a dealer, they were referred to the distributor closest to their place of residence or business. Dealers monitored compliance with the agreement by informing each other about adherence to the agreement and directed complaints to the importer if a distributor did not adhere to their assigned area. KIA itself also monitored dealers' activities and took disciplinary action against those who attempted to sell cars outside their designated area. Last but not least, the importer, along with the dealers, divided the market for vehicles offered to driver training centres. As a result, driving schools had limited access to competitive offers for KIA cars from other distributors.

The violation lasted from 2013 to 2021. UOKiK imposed fines totalling more than PLN 405 million (approx. EUR 94 million) on KIA Polska and 11 dealers and totalling more than PLN 1.65 million (approx. EUR 384,000) on five managers. Additionally, during the proceedings, UOKiK also imposed fines of approximately PLN 70,000 and PLN 93,000 (approx. EUR 16,200 and 21,600) for failing to provide information during the proceedings. The decision is not final, an appeal was filed against it.

## Iveco

The second case of anti-competitive agreements also concerns market sharing and price fixing between a supplier (importer) and distributors, specifically relating to the automotive sector for trucks. UOKiK found that the truck importer [Iveco](#) entered into an anti-competitive agreement with vehicle dealers, which – according to UOKiK – lasted at least 10 years (June 2009 – May 2019).

According to UOKiK's findings, the agreement involved market sharing where dealers assigned to a specific area had priority in selling and servicing customers from that area. A dealer approached by a customer from outside their area would either redirect them to another distributor or present them with an unfavourable offer. Additionally, Iveco granted itself exclusivity for selling certain trucks in its territory during a specific period.

Iveco maintained the anti-competitive agreement by using discounts and periodic bonuses based on sales performance. It exerted pressure on dealers to dissuade them from selling vehicles to customers from other areas and disciplined those who did not comply with the agreements, for example, by withdrawing their discounts. Dealers were also actively involved in the collusion. Some shared information about potential buyers and agreed among themselves on which dealer would have the right to make an offer to a particular customer. In such cases, other dealers were warned not to contact that customer or make competitive offers. They also ensured that their

business partners (so-called sub-dealers) sold trucks only within their assigned territory.

The market sharing was supported by price agreements. Parties involved exchanged information about the prices included in the offers directed to customers. The primary aim was to discourage potential buyers from purchasing trucks from a dealer other than the one designated by the agreements and to avoid price competition between dealers for individual customers.

UOKiK imposed fines totalling more than PLN 238 million (approx. EUR 55.3 million) on undertakings and totalling more than PLN 2,5 million (approx. EUR 581,400) on ten managers.

It is noteworthy that four undertakings (three from the same capital group) and their managers took advantage of the leniency programme (total or partial reduction of fines) during the proceedings. UOKiK reduced the fine imposed on DBK and its subsidiaries – CTC and On Road Truck Services, by 50%. Trans-Poz, as the second who applied for leniency, got a 20% reduction. Managers of the above-mentioned undertakings received a reduction in their fines to the same extent.

### *Dell*

UOKiK issued a commitment decision obligating **Dell** to revise its sales practices due to concerns that their existing system may have impeded competition. According to UOKiK, investigation revealed that Dell's method of registering transactions by authorized sellers potentially prevented other partners from offering competitive prices to the same customer, which could have constituted a prohibited market allocation scheme.

UOKiK believes that this practice could have deprived enterprises and institutions of the opportunity to purchase Dell equipment at more attractive prices or technological terms. Consequently, Dell is required to allow multiple authorized sellers to compete for the same customer without needing Dell's approval and to apply transparent criteria for granting discounts. These changes aim to ensure that customers can compare multiple offers and select the most advantageous one. Additionally, Dell was fined PLN 6 million (approx. EUR 1.38 million) for providing false and misleading information during the investigation, which in UOKiK's view hindered the effective performance of duties related to competition protection. The company was granted six months to implement the new sales rules, taking into consideration the need to modify global IT systems. Dell is also obligated to provide detailed information on how the new obligations are fulfilled.

### *Empire Brands*

**Empire Brands** is engaged in wholesale and retail sales of pet food. The company has been fined by UOKiK approx. PLN 350,000 (approx. EUR 81,000) for colluding on prices with its counterparties. According to UOKiK, Empire Brands imposed resale prices for its pet food on trading partners in online stores and shopping platforms, violating both Polish and EU competition laws.

The investigation revealed that Empire Brands controlled the price of pet food in its counterparties' online stores, setting a minimum price level equal to its own online store prices. According to UOKiK, this practice prevented consumers from purchasing at lower, competitive prices, leading

to artificial price maintenance in the market, which, in UOKiK's view, resulted in financial disadvantages for dog and cat owners. In its decision UOKiK stated that Empire Brands disciplined non-compliant trading partners through verbal admonishments, changes in payment terms, and, in extreme cases, termination of cooperation. The fines were also imposed on two managers.

### *Jura Poland (initiation of proceedings)*

In May 2024, UOKiK announced on its website the initiation of proceedings against [Jura Poland](#). According to UOKiK, Jura Poland, an exclusive importer of Jura brand coffee machines, may have engaged in price-fixing collusion with major electronics and appliance stores for nearly a decade. UOKiK has initiated proceedings against Jura Poland, its distributors, and an individual executive responsible for the company's distribution policy.

Evidence gathered during searches at the headquarters of several business entities (in 2023, UOKiK had already issued two decisions imposing fines for obstructing searches) indicates that Jura Poland and its authorized distributors may have agreed on minimum resale prices for coffee machines and their accessories. These agreements allegedly extended to promotional prices and the value of freebies for end customers, affecting both traditional and online sales channels. Jura Poland is suspected of monitoring the prices charged by authorized distributors and intervening if prices fell below the agreed levels, potentially through threats of halting deliveries, terminating contracts, or not renewing them. Additionally, vendors might have observed each other's pricing strategies and requested Jura Poland to take action if prices were too low. These actions allegedly ensured that consumers could not purchase coffee machines at prices lower than those set by the agreement.

## **Abuse of dominant position**

### *PZPN and Ekstraklasa*

At the beginning of 2024 UOKiK informed the public about the initiation of a preliminary investigation in response to concerns regarding the [Polish Football Association \(PZPN\)](#) and [Ekstraklasa S.A. \(Ekstraklasa\)](#) and how the fee for permission to use the results of football games was determined.

The investigation revealed that the PZPN and Ekstraklasa were charging a fixed fee of 0.5% on the total gross revenue of bookmaking entities for access to games results. This charge applied regardless of whether the revenue was specifically generated from events organized by PZPN and Ekstraklasa, raising concerns about the potential abuse of the dominant market position. Following UOKiK's investigation, both undertakings revised their fee structure. The new model is based on revenues generated solely from bets on Polish football teams' games. PZPN has also reduced its rates.

Interestingly, this is yet another proceeding in which UOKiK is examining the actions of Polish sports associations and leagues. This follows fines imposed among others on the Polish Basketball League in 2022 and the Polish Motor Association in 2023 [[see more here](#)].

## Merger Control – case study

The year 2024 passed smoothly, with over 300 decisions issued. For this reason, we briefly describe below three conditional clearances that may prove interesting in future negotiations of conditions with the authority.

The **first conditional decision** concerns the wholesale market of electrical and technical products. The acquiring undertaking, FEGA & Schmitt Elektrogroßhandel, is a member of the Adolf Würth Group, which is an international wholesaler and manufacturer of electrical installation, industry automatics, cables, and wires. The acquisition target was TIM, a distributor of electrical and technical products. To ensure that competition in the regional wholesale market, covering an area of 80 km from the wholesale store, is not substantially restricted (in particular through the creation or strengthening of a dominant position in the market) TIM must sell one shop located in Zielona Góra to an independent, UOKiK-approved investor.

The **second conditional decision** (news available only in Polish) concerns the concrete production market. Lafarge Cement will be able to acquire Eurobud Chajewscy, provided that it sells part of the concrete plant. UOKiK confirmed in its decision the definition of the market in the geographical dimension i.e. radius of 25 km of driving on public roads from the concrete plant. In the case of unconditional approval, Lafarge would have two main concrete plants on the relevant market.

The **third conditional decision** concerns the fuel market, where Anwim (Moya gas stations) seeks to acquire part of Elbah II. After a market investigation, UOKiK concluded that competition restriction could occur, thus, in order to finalise the transaction, Anwim must terminate the contract with one of its franchisors.

### *Court ruling in the distribution case: Spokey sp. z o.o.*

In 2021 UOKiK imposed a fine of 0.5 million PLN (approx. EUR 116,000) on Spokey for setting minimum prices for its distributors on sports equipment, such as rollerblades and scooters, for a period of over eight years. On 13 May 2024, the Court of Appeal in Warsaw, Poland, overturned the verdict of the Court of Competition and Consumer Protection (SOKiK – court of first instance). Initially, SOKiK had reduced the fine imposed on Spokey from PLN 568,679 to PLN 227,883, which was imposed by UOKiK on 4 March 2021 (decision number R?O-1/2/2021).

In its first-instance verdict, SOKiK pointed out, among other things, that UOKiK applied an excessively high base rate to calculate the fine for a violation that lasted 8 years. UOKiK had used a base rate of 160%, whereas in similar cases, the base rate was 90% for 8-year violation or 130% for a 13-year violation. According to SOKiK, UOKiK failed to consider several circumstances that should have decreased the base rate to 90%.

As a result of the appeal filed by UOKiK, the Court of Appeal upheld the fine in its original amount. The Court of Appeal stated that SOKiK had overstepped its bounds by significantly reducing the base rate for calculating the fine, thereby infringing upon UOKiK's administrative discretion. The case is worth watching, as the matter is ongoing and a cassation complaint has been filed to the Supreme Court.

## Investigating the digital sector – a new trend?

### *Video game market investigation*

Another investigation by UOKiK focuses on suspected anti-competitive practices by providers of **digital video game distribution platforms**. According to the statement from UOKiK, the investigation particularly concerns actions by providers such as PlayStation Store and Steam. The concerns include imposing restrictions on the sale of games and additional content on competing platforms or online stores, interfering with the pricing and discount policies of game developers and publishers, and limiting market access for competing platforms and other digital service providers.

UOKiK aims to thoroughly examine the relationships between undertakings operating in the video game market, particularly to assess their compliance with competition law. This case is especially intriguing, as, until now, Polish competition authority has paid less attention to modern channels of production/service delivery such as digital entertainment. In particular, this investigation can provide valuable insights into how UOKiK will approach defining the relevant market in the gaming sector. It can also shed light on which contractual provisions in agreements between developers and game distributors might potentially limit competition law.

### *Facebook (Meta) – IP and Competition Law*

In 2024 UOKiK launched an investigation into **changes implemented on Facebook** platform by Meta Platforms Ireland. These changes concern the manner of presenting press articles and links within the Facebook mobile application. UOKiK will examine whether the company's actions constitute an abuse of its dominant position. Additionally, the investigation will consider intellectual property regulations, as the change in content display might be related to the amendment of copyright law.

In Poland Meta has changed the way links to news articles are displayed on Facebook, showing only the headline and hyperlink, without images or text from the article. This modification leads to social media users (specifically those using the mobile version of Facebook) being less likely to click on articles (links) without images, leading to fewer views and decreased advertising revenue for publishers. The change on Facebook was implemented on September 20, the same day when new provisions of the Act on Copyright and Related Rights came into force in Poland.

Meta claims that the implementation of Article 15 of the Directive in Poland results in a lack of clarity regarding the application of the new regulations. Meta states it is a temporary approach as they await guidelines on the scope of Article 15 of the Directive from the Court of Justice of the European Union (CJEU) concerning similar implementing regulations in Italy. Meta assures that appropriate updates will be provided as soon as the CJEU offers further clarification in its ruling.

The case is worth watching for two reasons. First, because it highlights the complex interplay between intellectual property law and competition law, particularly in the context of digital content distributions. Secondly, the modifications implemented by Meta have significant implications for the digital advertising market, affecting how new articles are monetised. The outcome could set important precedents for the regulation of digital platforms and their compliance with both competition and IP laws.



## **Merger Control Guidelines – update**

UOKiK has updated its merger notification guidance (available in Polish only – [here](#)), providing long-awaited clarification on the exemption from the notification obligation for extraterritorial JVs with no operations in Poland and no vertical relationships with companies operating in Poland, introducing a new “effect test”. Polish merger control thresholds have been capturing a particularly large number of joint venture transactions, including extraterritorial JVs with no connections to companies operating in Poland.

The new guidelines clarify that for a JV, irrespective of the turnover of its shareholders, the JV must be active in the market that covers the territory of Poland or needs to have vertical relationships with companies active in Poland. The guidelines further clarify that local effects will not occur when a JV operates in markets considered local that do not encompass Poland’s territory. This will be the case, for example, when establishing a joint venture whose activities involve generation and marketing of electricity outside of Poland because the markets for the generation and marketing of electricity, according to existing Polish case law, have a national dimension. The updated guidelines are generally expected to reduce the number of JV notifications.

## **Investment Control Guidelines – update**

UOKiK has updated its Investment Control Guidelines (available in Polish only – [here](#)) to address interpretative uncertainties and questions raised by businesses and their representatives regarding procedural matters. UOKiK enhanced its guidelines to cover several key areas, including the requirement to submit the necessary information for UOKiK to file the FDI form with the European Commission – a procedure still largely unfamiliar to many undertakings. The updated guidelines also provide more comprehensive information on who must notify UOKiK about a planned investment, along with additional details on procedural and practical issues, such as the requirement to legalise foreign official documents.

## **Collusion and Abuses on the Labour Market Guide – new**

In May 2024, the European Commission published a Competition Policy Brief – Antitrust in Labour Markets (available [here](#)), signalling a broader EU-wide interest in addressing anti-competitive practices in this area. Following the European Commission’s lead, in July UOKiK issued a comprehensive guide<sup>2</sup> for entrepreneurs, highlighting the key areas of concern regarding anti-competitive practices in the labour market. UOKiK’s guide identifies several types of agreements that may violate competition law, including wage-fixing agreements, no-poach agreements, and coordination of other working conditions.

Considering the specifics of the Polish labour market, UOKiK’s guide explains that employees, within the meaning of competition protection law, include not only those employed under a standard employment contract but also other individuals providing work, such as those signing contracts of mandate and those running sole proprietorships. This broad definition can encompass developers performing tasks for an IT company or athletes in a sports club.

According to UOKiK's guide, the abuse of dominant position includes practices where a company with significant market power imposes non-compete clauses that go beyond what is necessary to protect its business interests. Thus, non-compete clauses are yet another area where businesses must tread carefully. While these clauses are often used to protect legitimate business interests, such as trade secrets and customer relationships, by preventing employees from leaving to work for competitors or start their own businesses, they can also be misused. In UOKiK's view, when improperly applied, non-compete clauses can be a tool for stifling competition, restricting worker mobility, and maintaining market dominance.

UOKiK's publication indicates that, similar to other competition authorities across Europe, the Polish authority will closely scrutinise labour market practices, particularly those involving wage-fixing and no-poach agreements (see [our article](#) on this subject).

### **Imposition of Fines for Anti-Competitive Practices Guidelines – update**

In April, UOKiK published new guidelines regarding the imposition of fines on undertakings for violations of competition law (available in Polish only – [here](#)). The previous guidelines needed updating due to the implementation of the ECN+ Directive in 2023, which introduced changes concerning the imposition of fines on undertakings that are part of capital groups.

UOKiK may impose fines for competition law infringements, not only on an individual undertaking but also on an undertaking or undertakings exerting decisive influence over this entity. Similarly, UOKiK can impose a fine on both the manager of the subsidiary and the manager of the undertaking exerting decisive influence over this entity.

The guidelines outline when decisive influence is exerted by one undertaking over another and how fines will be imposed on both – the undertaking exerting the influence and the undertaking being under influence. Moreover, the new guidelines clarifies, among other things, how UOKiK will determine the starting and base amount of fines, including what factors cause an increase and decrease in the fine.

### **Conclusion**

The year 2024 was decidedly focused on updating existing guidelines and preparing new ones. Notable developments can be observed in the area of antitrust on the labour market. It is particularly worthwhile to monitor the progression of proceedings in the area of digital markets, especially the video game distribution market and individual platform markets, such as Facebook.

Besides the above efforts, in the area of anti-competitive agreements, UOKiK's attention remained also on traditional sectors. The automotive sector and sale of goods were particularly scrutinized, with several decisions issued. These sectors have historically been prone to anti-competitive practices, making them a continuous focus for the competition authorities.

In 2024 UOKiK also conducted two proceedings regarding potential abuse of dominant position. These proceedings were closed without issuing decisions that confirmed any violations of the law – once undertakings changed their practices after UOKiK's intervention (PZPN and Ekstraklasa



case) and once, after gathering evidence, the authority decided to discontinue the antitrust proceedings in the TV channels production market (Telewizja Polsat and Discovery Group case).

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