

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

POLAND

January 2011

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions	Act of 16 February 2007 on competition and consumer protection (the "Act") (O.J. of 2007, No. 50, item 331). http://www.uokik.gov.pl/en/competition_protection/concentration_control/
B. Notification forms or information requirements	Regulation of the Council of Ministers of 17 July 2007 concerning the notification of the intention of concentration of undertakings (O.J. of 2007, No. 134, item 936 and 937) The attachment to the Regulation contains a list of information required in the merger notification form- List of Information and Documents "LID"
C. Substantive merger review provisions	Title III, Chapter I, II, Articles 13-23; and Title VI, Chapter III, Articles 94-99 of the Act.
D. Implementing regulations	Regulation of the Council of Ministers of 17 July 2007 concerning the notification of the intention of concentration of undertakings (Journal of Laws of 2007, No. 134, item 936 and 937)

	Regulation of the Council of Ministers of 17 July 2007 concerning the method of calculation of the turnover of undertakings participating in the concentration (Journal of Laws of 2007, No. 134, item 934 and 935)
E. Interpretive guidelines and notices	Guidelines of the President of the Office of Competition and Consumer Protection (UOKiK) on the criteria and procedure for notifying the intended merger (2010).

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	The President of the Office of Competition and Consumer Protection ("the UOKiK " or "the Office") is the central government administration authority competent in the field of competition and consumer protection, including merger control
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Office of Competition and Consumer Protection Plac Powstańców Warszawy 1 00-950 Warszawa, Poland tel. 0048 22 5560800 fax. 0048 22 8266125 website: www.uokik.gov.pl e-mail: uokik@uokik.gov.pl Polish, English version available
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Pre-notification consultation is carried out on an informal basis by sector-specific departments of the Office. <u>The Department of Concentration Control,</u> ph.: (+48 22) 556 01 22 fax: (+48 22) 826 91 06 dkk@uokik.gov.pl <u>The Department of Market Analyses,</u> tel.; (+48 22) 55 60 281 fax: (+48 22) 826 13 53 dar@uokik.gov.pl

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)

Pursuant to Art. 13 of the Act :

1. The intention of concentration is subject to a notification submitted to the President of the Office in the case where:
 - 1) the combined worldwide turnover of undertakings participating in the concentration in the financial year preceding the year of the notification exceeds the equivalent of EUR 1 000 000 000, or
 - 2) the combined turnover of undertakings participating in the concentration in the territory of the Republic of Poland in the financial year preceding the year of the notification exceeds the equivalent of EUR 50 000 000.
2. The obligation referred to in Paragraph 1 concerns the intention of:
 - 1) a merger of two or more independent undertakings;
 - 2) taking over – by way of acquisition or entering into a possession of stocks, other securities, shares or in any other way obtaining direct or indirect control over one or more undertakings by one or more undertakings;
 - 3) creation by undertakings of one joint undertaking;
 - 4) acquisition by the undertaking, of a part of another undertaking's property (the entirety or part of the undertaking), if the turnover achieved by the property in any of the two financial years preceding the notification exceeded in the territory of the Republic of Poland, the equivalent of EUR 10 000 000.

B. If change of control is a determining factor, how is control defined?

The concept of "takeover control" shall mean any form of direct or indirect acquisition of rights by the undertaking, which, individually or jointly, taking into account all legal or factual circumstances, allow for exerting a decisive influence upon another undertaking or other undertakings; in particular, such powers are created by:

- a) holding directly or indirectly a majority of votes in the shareholders' meeting or general meeting of shareholders, also in the capacity of a pledge or user, or in the management board of another undertaking (dependent undertaking) also under agreements with other persons,
- b) the right to appoint or recall a majority of members of the

	<p>management board or supervisory board of another undertaking (dependent undertaking), also under agreements with other persons,</p> <p>c) members of its management board or supervisory board constitute more than half of the members of another undertaking's (dependent undertaking's) management board.</p> <p>d) holding directly or indirectly, a majority of votes in the dependent partnership or in the general meeting of the dependent cooperative, also under agreements with other persons,</p> <p>e) ownership of entirety or part of the property of another undertaking (dependent undertaking),</p> <p>f) an agreement which stipulates the management of another undertaking (dependent undertaking) or transfer of profit by such undertaking</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Where a stock acquisition/ minority shareholding confers control, such a transaction will amount to a takeover of control. Subscription for a minority shareholding in a joint undertaking also amounts to a merger.</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Notification requirements cover all types of joint ventures provided the legal requirements justifying the notification have been fulfilled.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>The intention of concentration is subject to a notification submitted to the President of the Office in the case where:</p> <p>1) the combined worldwide turnover of undertakings participating in the concentration in the financial year preceding the year of the notification exceeds the equivalent of</p> <p>EUR 1 000 000 000, or</p> <p>2) the combined turnover of undertakings participating in the concentration in the territory of the Republic of Poland in the financial year preceding the year of the notification exceeds the equivalent of EUR 50 000 000.</p>
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<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant entrepreneurs/firms for threshold purposes? If based on control, how is control determined?</p>	<p>The thresholds apply to all entities from the capital group of the entrepreneurs participating in the concentration. According to Art. 16 of the Act, the turnover shall include the turnover of undertakings directly participating in the concentration as well as of the remaining undertakings participating in the capital groups to which undertakings directly taking part in the concentration belong.</p> <p>For the definition of control see point 3B.</p>
<p>C. Are the thresholds subject to adjustment: (e.g., annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>No.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>The thresholds relate to the financial year preceding the year of the notification (in the case of world-wide turnover - Article 13.1 of the Act), or the two financial years preceding the year of the notification (in the case of domestic turnover - Article 14 of the Act).</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>The values necessary to determine whether merger notification is mandatory, are</p> <ul style="list-style-type: none"> - a combined world-wide and domestic turnover of the entrepreneurs participating in the concentration and their capital groups, - a domestic turnover of the entrepreneur over which the control is to be taken and its capital group. <p>The turnover of undertakings participating in the concentration, is calculated as the sum of revenues obtained in the preceding year from sales of products and sales of goods and materials, combined into the operational activity of the undertakings, after deduction of granted rebates, discounts and other decreases and value added tax, as well as other taxes related to turnover, if they were not deducted, shown in the profit and loss account prepared on the basis of accountancy regulations. The sum of revenues is increased by the value of obtained specific subsidies.</p>

<p>F. Describe methodology for calculating exchange rates.</p>	<p>The value expressed in EUR referred to the provisions of the Act on competition and consumer protection shall be converted into Polish Zloty (PLN) according to the average exchange rate of foreign currencies published by the National Bank of Poland on the last day of the year preceding the year in which the intention of concentration or a fine is imposed.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>The thresholds for notification apply both to worldwide and domestic turnover. See point 4A.</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>Yes, if its turnover exceeds the notification threshold set forth in point 4A.</p>
<p>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?</p>	<p>The Act (Article 1.2) governs the rules and measures of counteracting anticompetitive concentrations of entrepreneurs which do or may cause effects on the territory of the Republic of Poland. Such effect is deemed to occur where, for example, an entrepreneur which is a member of the same capital group that one of the entrepreneurs directly involved in the concentration, has a distribution system or effects permanent sales on the territory of Poland.</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>The relevant criterion is the location of the customers.</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>Not applicable.</p>
<p>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media)?</p>	<p>Particular rules as to calculating the turnover in banking, insurance, brokerage houses, investment funds or sub-national self-governing entities are set in a Regulation of the Council of</p>

or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?	Ministers on the methodology of calculating the turnover of entrepreneurs participating in a concentration (Journal of Laws 2007, No. 134, item 935).
M. Are any sectors excluded from notification requirements? If so, which sectors?	No.
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	There are no other specific legislation applicable to foreign mergers.
O. Does the agency have the authority to review transactions that fall below the thresholds?	No.

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	Yes, if the notification thresholds are met.
B. Is notification mandatory post-merger?	Not applicable.
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Not applicable.
D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?	The transaction must be notified and approved by the UOKiK President before closure of the transaction (i.e., the parties must refrain from actually concluding the transaction before clearance is obtained). The earliest stage of notification is not described, however, it is considered that the notifying party shall notify if it is able to submit all of the required documents.

<p>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p>There is no deadline for notification. The parties are obliged to refrain from completing the transaction until clearance has been obtained.</p>
<p>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>Not applicable.</p>

6. Simplified procedures

<p>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</p>	<p>Not applicable. There is no simplified procedure in Poland.</p>
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7. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies,</p>	<p>Notification must be submitted on the LID Form, detailed in the Regulation of the Council of Ministers of 17 July 2007 on notification of intended concentrations of undertakings. The form must be accompanied by a number of additional documents, inter alia:</p>
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<p>transaction documents).</p>	<ul style="list-style-type: none"> - a duplicate of the Trade Register file, - copies of the final or most recent versions of all agreements, - other documents identifying all actions undertaken, leading to a merger, - plan/structure of the merger, - in the case of a public takeover bid: a copy of the offer document, - copies of annual financial reports of all entrepreneurs participating in a merger, from the two previous financial years, - copies of other reports, analyses, or studies prepared for the use of the entrepreneurs/general assembly/assembly of partners for the analyses of merger conditions (such as market competitors condition and situation on a relevant market).
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>In all proceedings before the UOKiK President, only original documents or copies certified by a public administration body, notary, attorney at law, legal advisor or authorized employee of the entrepreneur may be served as documentary evidence.</p> <p>Documents to be served as evidence in proceedings must be drawn up in Polish.</p>
<p>C. Are there special rules for exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</p>	<p>Not applicable.</p>

8. Translation

<p>A. In what language(s) can the notification forms be submitted?</p>	<p>The notification shall be submitted in Polish.</p>
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<p>B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.</p>	<p>In case of any document drawn up in a foreign language, its translation into Polish should be certified by a sworn translator (Article 51.3 of the Act).</p>
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9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>The proceedings in merger control cases shall be terminated not later than within 2 months of the notification date (Article 96.1 of the Act).</p> <p>This time limit does not include periods of waiting for notifications of the remaining participants to the concentration, or periods for eliminating errors or supplementing information required in the proceedings before the UOKiK President.</p> <p>If no decision is taken by the UOKiK President within the time period set out above, the entrepreneurs are no longer obliged to refrain from closing the concentration, and the proceedings shall be discontinued (Article 97.2 of the Act).</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No</p>
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's</p>	<p>In case an entrepreneur proposed commitments to the UOKiK President, the review period may be extended by an additional 14 days.</p> <p>See point 9 A.</p>

discretion or with the parties' consent)? Is there a statutory maximum for extensions?	
D. What are the procedures for accelerated review of non-problematic transactions, if any?	Not applicable.

10. Waiting periods / suspension obligations

A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.	<p>The transaction must be notified and approved by the UOKiK President before its closure (i.e., the parties must to refrain from actually concluding the transaction). In merger control cases, the proceedings shall be terminated not later than within 2 months of the notification date.</p> <p>See point 9A and C.</p>
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	<p>If the transaction is an acquisition or exchange of shares in the course of a public offer, and the purchaser does not execute voting rights arising from shares acquired/exchanged, or it is done solely to escape serious damage or to maintain the full value of the capital investment, the waiting period does not apply.</p>
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local entrepreneurs/business units)? If not, to what extent do they apply to	<p>The waiting periods described in question 9A are applicable to the proposed merger as a whole.</p>

<p>the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g., request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes. See point 9A.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>See point 9A and C.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>Not applicable</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>See point 10B.</p>

11. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</p>	<p>The intention of concentration shall be notified by merging undertakings jointly – in the case of merger or creation of joint venture.</p> <p>If the concentration constitutes an acquisition of control or an acquisition of a part of another undertaking's property, the acquiring entrepreneur is responsible for filing a notification.</p> <p>In the case where a concentration is implemented by a dominant undertaking by intermediary of at least two dependent undertakings, the notification of intention of concentration shall be submitted by a dominant undertaking.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>No.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>Lawyers representing entrepreneurs participating in the concentration are obliged to attach an appropriate power of attorney to the notification form.</p> <p>If a power of attorney has been drawn up in a foreign language, the translation into Polish should be submitted as certified by a sworn translator.</p>

12. Filing fees

<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered</p>	<p>Filing fees are specified in the Regulation of the Council of Ministers of 17 July 2007 on notification of intended concentrations of undertakings. In the case of a merger notification, the fee is PLN 5,000, which is equal to approximately EUR 1 280 (as of January 2011).</p>
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fees based on complexity, tiered fees based on size of transaction)?	
B. Who is responsible for payment?	Notifying entrepreneur/parties.
C. When is payment required?	At the latest, on the day of notification.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	The fee can be paid directly to the cashier or bank account of the competent local tax office. The proof of payment is required to be attached to the notification form.

13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	Pre-merger notification to the UOKiK or related information is not made public.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	Yes. However the UOKiK President may, upon request of the party or <i>ex officio</i> , restrict the other (notifying) parties' access to the files for confidentiality reasons.
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Third parties have no access to notification materials.
D. Are procedures available to request confidential treatment of the fact of notification and/or	The notifying party may indicate whether any information submitted the notification is "sensitive", defined as any information not available in public domain. Any information not considered as "business secret" can be used in the public

notification materials? If so, please describe.	available version of the decision.
E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	None of the agreements concluded by the UOKiK President with its counterparts from other states contain any provisions relating to the exchange of confidential information. This however does not concern competition authorities from other Member States and the European Commission.
F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?	The UOKiK President can exchange confidential information with competition authorities and the European Commission.

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	<p>Annual reports on the activities of the Polish Office of Competition and Consumer Protection, are available at:</p> <p>http://www.uokik.gov.pl/pl/o_urzedzie/informacje_ogolne/sprawozdania_z_dzialalnosci_urze/</p> <p>The Annual Reports are available in English:</p> <p>http://www.uokik.gov.pl/en/information_about_the_occp/general_information/reports_of_activities/</p>
B. Does the agency publish press releases related to merger policy or investigations?	<p>Yes, press releases are available at:</p> <p>http://www.uokik.gov.pl/en/press_office/press_releases/</p>
C. Does the agency publish decisions on why it cleared / blocked a	The UOKiK President blocks mergers very rarely. The summaries of decisions are published in the Official Journal (without confidential information).

transaction?	
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15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</p>	<p>The President of the Office may impose upon the undertaking, by way of a decision, a financial penalty being not in excess of 10% of the revenue earned in the accounting year preceding the year within which the penalty is imposed, if the undertaking, even if unintentionally, has implemented a concentration without a consent from the President of the Office .</p> <p>The President of the Office may also impose upon the undertaking, by way of a decision, a financial penalty being an equivalent of up to EUR 50 000 000, if the undertaking, even if unintentionally, has quoted any untrue data; or provided untrue or misleading information.</p> <p>A financial penalty for failure to notify a concentration may also be imposed on a person performing managerial functions or belonging to the managing body of the entrepreneur, to the amount up to fifty-fold the average salary.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>With respect to a transaction that is closed prior to clearance from the UOKiK – the notifying party(ies) which actually close concentration before clearance shall be liable.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>The UOKiK President impose fines directly by a decision.</p>

16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency</p>	<p>The decisions of the UOKiK President are subject to appeal to the Court for Competition and Consumer Protection, within 14 days of the date of delivery to the notifying parties. Where an appeal is</p>
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<p>decisions on merger notification and review.</p>	<p>made, the provisions of the Code of Civil Proceedings are applicable.</p> <p>In the case of an appeal against the decision of the President of the Office, the President remits it to the court together with case files.</p> <p>If the President of the Office considers the appeal justified, he may revoke or change his decision in its entirety or in part. The resolutions of the President of the Office are also subject to complaints, which can be lodged within one week as of the day of the remittance of the resolution.</p> <p>The judgement of the Competition Court might be further challenged before the Appeal Court. The judgement of the Appeal Court in exceptional situations might be challenged before the Supreme Court, from which any decision would be final.</p>
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17. Additional filings

<p>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</p>	<p>According to separate legal provisions, some types of transactions should be also notified to other governmental authorities, for example concentrations in the banking sector should be notified to the Financial Supervision Authority.</p>
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18. Closing deadlines

<p>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</p>	<p>The UOKiK President's decisions approving concentrations expire if the concentration is not completed within the time limit of 2 years from the issuance of the decision.</p>
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19. Post merger review of transactions

<p>Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</p>	<p>The UOKiK President may revoke a decision approving the concentration in cases where the decision was based on dishonest information for which the parties to the concentration are responsible, or if they do not comply with commitments made in the decision.</p> <p>Where, the concentration is already implemented and restoration of the competition in the market is otherwise impossible, the President of the Office may, by way of a decision, defining the time limit for its implementation under conditions specified in the decision, order in particular:</p> <ol style="list-style-type: none">1) separation of the merged undertaking under conditions defined in the decision;2) disposal of the entirety or part of the undertaking's assets;3) disposal of stocks or shares ensuring the control over the undertaking or undertakings, or dissolution of the company over which the undertakings have joint control <p>The decision, however, cannot be issued after the lapse of 5 years from the day the concentration was implemented.</p>
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