

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Office of Competition and Consumer Protection, Poland

The following template is submitted by **Office of Competition and Consumer Protection, Poland** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

I. Introduction

The [Office of Competition and Consumer Protection](#) (hereafter: UOKiK, the Office) was established in 1990 as the Antimonopoly Office and is based in Warsaw with [8 branch offices](#) across Poland. Counteracting the anti-competitive agreements and abuse of the dominant position on the market as well as control of concentration of entrepreneurs were set as the main tasks of the Office. These competences were repeatedly increased.

A significant change took place in 1996, when after the reform of the central administration, the AO received its present name – the Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów – UOKiK.) On 16 February 2007 a new [Act of competition and consumer protection](#) (hereinafter: the Act) was adopted. In order to improve the effectiveness of the Office's operations, the Act eliminated the institution of proceedings launched upon a motion with regard to practices restricting competition and infringing collective consumer interests. The Act empowers the President of the Office to impose fines on undertakings who have infringed collective consumer interest.

On 20 May 2023, legislation amending the Act entered into force. The Act implements into Polish law the ECN+ Directive ([Directive of the European Parliament and of the Council \(EU\) 2019/1 of 11 December 2018 aimed at empowering the competition authorities of the Member States to enforce the law more effectively and ensure the proper functioning of the internal market](#)).

The amendments are rather extensive, but the main ones include expanding liability for restrictive practices to parent companies, creating new rules on calculation of fines imposed on associations of undertakings, and changing the procedure for conducting inspections and searches of undertakings. The amendments also include provisions which significantly strengthen operational independence of Polish Competition Authority such as introduction of the term of office and rules preventing of conflicts of interests. A new chapter creating rules on mutual cooperation in cases of enforcement of decisions imposing fines or periodic penalty payments (as it was required by the directive ECN+) has also been introduced in the Act by amendments of 2023.

The President of UOKiK is a central authority of the government administration. They report directly to the Prime Minister, who appoints them from amongst the persons selected by way of an open and competitive contest. The President of the Office is appointed by the Prime Minister for a five-year term from among persons selected in an open and competitive recruitment procedure. The same person may not be the President of the Office for more than two terms of office. After the expiry of the term of office, the President of the Office

performs his function until the appointment of a successor. The President of UOKiK is responsible for shaping the antitrust policy and consumer protection policy.

The primary antitrust instrument used by the President of the Office are proceedings concerning competition restricting practices, i.e. abuses of a dominant position and prohibited agreements (cartels). The proceedings may end in a decision ordering the enterprise involved to cease the activities in question and pay a fine. The President of the Office is also authorized to control mergers in order to prevent situations where as a result of a merger a dominant entity is created on the market. Since 2004 the Office has been providing its opinion on state aid schemes and individual state aid decisions before their notification to the European Commission, which is the only body with the power to determine state aid's compliance with the Single Market. Based on reports from the granting entities and beneficiaries, UOKiK prepares annual reports on state aid, evaluating its effectiveness, efficiency and impact on competition.

The President of UOKiK has also the power to carry out proceedings concerning practices infringing collective consumer interests, which may lead a decision ordering the enterprise involved to cease the practices in question and pay a fine. Further consumer protection activities include ridding B2C contracts from prohibited clauses, i.e. contract terms setting forth consumers' interests in a way that infringes the law or good practices. Here, the major instrument used by UOKiK are inspections of contracts used by enterprises.

The Office also applies European competition rules (art. [101](#) and [102](#) of the Treaty on the Functioning of the European Union (TFEU)) when the anticompetitive practices are likely to affect trade between the EU Member States.

There is also an [English version](#) of UOKiK website, in which under the sections "[About Us](#)", "[Foreign Cooperation](#)", "[Law](#)", "[Payment Gridlocks](#)", "[Competition](#)", "[Consumers](#)", "[State Aid](#)" and "Product safety" all the relevant information can be found. In particular, [reports on activities](#), [regulation](#), [education](#) and [news](#) can be found in Polish and English.

In case of questions, please do not hesitate to contact us: Derszniak-Noirjean (Martyna.derszniak-noirjean@uokik.gov.pl); Iryna Kokun (Iryna.Kokun@uokik.gov.pl);

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

Article 8 of the [Code of Administrative Procedure](#) of 14 June 1960 (Journal of Laws of 2023; item. 775)

Principle of deepening trust

§1. Public administration authorities shall conduct the proceedings in such a manner as to deepen the trust of its participants in the public authorities, abiding by the principles of proportionality, impartiality and equal treatment.

§2. Without justified cause the public administration authorities shall not depart from the established practice of determination of matters of the same factual and legal status.

For English version of the Administrative Code, please see:

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/EN%20-%20Code%20of%20Administrative%20procedures%20Poland%20.pdf>

Article 83 of the Act of competition and consumer protection

In matters not regulated in this Act, proceedings before the President of the Office shall be governed by provisions of the Act of 14 June 1960 - Code of Administrative Procedure, subject to Article 84.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

All the relevant legislation, regulations and agency guidance is publicly available on UOKiK website in Polish as well as in English (for most of them). In particular:

The Act of 16 February 2007 on [Competition and Consumer Protection \(Journal of Laws of 2023; item. 852\)](#)

Regulation of the council of ministers of December 23, 2014 on [the notification of intended concentration of undertakings](#) (Journal of Laws of January 15, 2015)

Act of 30 April 2004, [on the procedural issues concerning state aid](#) (Journal of Laws of 2023; item. 852)

Act of 30 May 2014 on [consumer rights](#) (Journal of Laws of 2021; item. 2105)

Act of 23 August 2007 on [combating unfair commercial practices](#) (Journal of Laws 2023; item. 845)

Act of 16 April 1993 on [combating unfair competition](#) (Journal of Laws of 2022; item. 1233)

- https://www.uokik.gov.pl/legal_regulations.php

Guidance on Merger Notification Process:

- *Guidelines on the criteria and procedure for notifying intended concentrations,*
- *Diagram – explaining the method of counting the turnover of capital groups,*
- *Notification and Turnover Regulation.*

UOKiK website collects all [decisions](#), [reports](#) and [news](#), which are updated each time new measures are published (almost every day). In addition, the website contains news related to the above mentioned decisions also in English.

Since the accession of Poland to the European Union, the Office operates within the scope of the European Competition Network (hereafter: ECN). Based on that, Poland is required to actively participate in the [European Competition Network](#). The EU Commission and competition authorities from EU member states cooperate with each other through the ECN by:

- *informing each other of new cases and envisaged enforcement decisions;*
- *coordinating investigations, where necessary;*
- *helping each other with investigations;*
- *exchanging evidence and other information;*
- *discussing various issues of common interest.*

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g.,*

forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.

- ii. *Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. *Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The President of UOKiK informs entities under investigation about the opening of the investigation as soon as possible taking into account the specific nature and needs of the investigation.

General provisions concerning the anticompetitive agreements and abuse of a dominant position proceedings before the President of UOKiK ([Act](#))

Article 47. 1. The proceedings before the President of the Office shall be conducted as preliminary proceedings, antitrust proceedings, proceedings concerning classification of clauses in standard agreements as abusive, or proceedings concerning practices infringing collective consumer interests.

2. Preliminary proceedings may be conducted prior to instituting antitrust proceedings, proceedings concerning classification of clauses in standard agreements as abusive, or proceedings concerning practices infringing collective consumer interests.

Article 48. 1. The President of the Office may, acting ex officio and by way of a resolution, institute preliminary proceedings, if the circumstances indicate that the provisions of the Act might have been infringed regarding a given branch of the economy, or regarding protection of consumer interests, and in any other cases as provided for by this Act.

3. Preliminary proceedings shall be concluded by way of a resolution.

Article 50. Undertakings, non-business persons and legal persons, as well as organizational units that are not legal persons, to which separate regulations grant legal capacity, shall be obliged to provide all necessary information, including the transfer of documents at the request of the President of the Office.

2. The request referred to in paragraph 1 should include:

1) scope of such information;

2) objective of the request;

3) time limit for providing information;

4) information about sanctions for failing to provide information or for providing false or misleading information.

3. Any person shall be entitled to submit, in written form, on their own initiative or upon request of the President of the Office, explanations concerning the essential circumstances of a given case.

Article 88. 1. A party to the proceedings shall be any person against whom proceedings concerning competition-restricting practices are instituted.

2. The President of the Office shall issue a resolution instituting antitrust proceedings and shall notify the parties concerned of this fact.

Antitrust proceedings concerning concentration before ([Act](#))

Article 94. 1. Any person who submits a notification, in conformity with paragraph 2, of intent to concentrate shall be a party to proceedings.

Article 95. 1. The President of the Office:

1) shall return the notification of the intent to concentrate, if no notification of the intent to concentrate is required;

2) may return, within 14 days, the notification of the intent to concentrate, if such notification fails to meet the applicable requirements;

3) may issue notice to the party submitting the notification of the intent to concentrate requiring it to provide missing information and additional information needed as specified, within the specified time limit;

4) may return notification of the intent to concentrate if notice has been issued pursuant to subparagraph 3, requiring that missing information and additional information be submitted, but the party submitting the notification fails to do so within the specified time limit.

Regarding antitrust proceedings Article 89 of the [Act](#) constitutes the right to be heard during the investigative process conducted by UOKiK:

Art. 89. 1. If, in the course of antitrust proceedings, it has been rendered plausible that any further application of the alleged practice may cause serious threats to competition which it would be difficult to remedy, the President of the Office may, prior to the conclusion of the antitrust proceedings, and by way of a decision, require the undertaking alleged to be applying a given practice to cease the specific conduct, in order to prevent those threats. Filing of an appeal shall not stay execution of the said decision. Prior to issuing the decision, no right shall be vested in the party concerned to express its standpoint as to the evidence and materials gathered, or demands submitted, as referred to in Article 10 of the Act of 14 June 1960 Code of Administrative Procedure.

Article 10 of the [Code of Administrative Procedure](#) of 14 June 1960 (Journal of Laws of 2023; item. 775)

Principle of hearing of the parties

§1. Public administration authorities shall ensure that the parties may actively participate in every stage of the proceedings, and prior to issuing a decision the authorities shall give the

parties an opportunity to present their position as to collected evidence and materials and submitted demands.

§2. Public administration authorities may depart from the principle specified in §1 only if the matter must be decided without delay due to a threat to human life or health or due to threatening irreparable material damage.

§3. Public administration authorities shall, by way of annotation, enter in the records the reasons for departing from the principle specified in §1.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

Article 48. 4 of the [Act](#)

Preliminary proceedings should not last longer than 4 months, and as regards particularly complex issues, no longer than 5 months from the date of the institution thereof.

Article 92 of the Act

Antitrust proceedings concerning competition-restricting practices should be completed no later than 5 months from the they are instituted. The provisions of Articles 35 to 38 of the Act of 14 June 1960 - Code of Administrative Procedure shall apply accordingly.

Article 96 of the Act

Antitrust proceedings in concentration cases should be concluded within one month from the day on which they are instituted.

Article 96a of the Act

In cases:

1) which are particularly complicated,

2) in which it appears from the information contained in the notification of intent to concentrate or from other information, including information obtained by the President of the Office in the course of conducted proceedings, that there is reasonable probability of competition being impeded on the market as a result of the concentration, or

3) where a market study is required

- the time limit for concluding the proceedings shall be extended by 4 months.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

President of UOKiK, published a [guide](#) on how to submit applications for the restriction of the right of access in proceedings, where issues related to:

- *The principle of openness of proceedings and its limitations;*
- *Clarification of the concept of business secret;*
- *Elements of the request for restriction of the right of access;*
- *Who may file a request for restriction of the right of access;*
- *When the request for restriction of the right of access should be filed;*

The procedures for the protection of confidential information follow the provisions of the [Act](#):

Article 4 (17) “business secret” - shall mean a business secret as defined in Article 11 paragraph 2 of the Act of 16 April 1993 on [Combating Unfair Competition](#) (Journal of Laws of 2023; item. 845), as amended): “Company confidentiality is understood to include the entrepreneur’s technical, technological organizational or other information having commercial value, which is not disclosed to the public to which the entrepreneur has taken the necessary steps to maintain confidentiality.”

Article 31b of [the Act](#): The President of the Office shall publish on the Office’s website, in full, the contents of decisions issued pursuant to the Act, while publication of the statement of reasons shall not include business secrets or any other types of information protected under separate provisions. The publication shall state whether the decision is legally binding.

Article 60. 1. During the proceedings the President of the Office may hold a hearing.

4. The hearing referred to in paragraph 1 is a closed session, if the information to be examined in the course of the hearing constitutes business secrets or other types of secrets protected under separate provisions.

Article 69. 1. of [the Act](#): The President of the Office may, upon request or ex officio, and by way of a resolution, limit to the extent necessary the right of access to evidence in the case files, if granting access to such evidence would entail a risk of disclosing a business secret or any types of secrets which are protected under separate provisions.

Article 71. of [the Act](#):

1. The President of the Office, the Vice Presidents of the Office and the employees of the Office shall be obliged to protect corporate secrets and other information subject to protection

under separate regulations, as well as other information obtained in connection with the performance of official activities, including:

1) information known to a limited number of persons, the disclosure of which may cause negative consequences for the person who presented it, or for a third party, in a situation where the interest that may be violated by the disclosure of such information deserves protection;

2) documents prepared for the internal use of the President of the Office, the European Commission or the competition authority of another European Union member state, as well as correspondence between these authorities."

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Change resulting from the implementation of the ECN+ directive - Art. 34a:

Art. 34a. 1. The President of the Office, vice-presidents of the Office and employees of the Office:

1) perform their duties and powers regardless of political and other external influences;

2) may not seek instructions from government administration bodies or other public or private entities and may not accept instructions from these bodies and entities when performing their duties and powers;

3) refrain from activities that could result in a conflict of interests.

2. The President of the Office, vice-presidents of the Office and employees of the Office who participated in issuing the decision may not be involved in the same case for a period of 3 years from the end of their function or termination of employment in the Office.

Compliance is ensured by the Article 8 and 24 of the [Code of Administrative Procedure](#) pursuant to which the case handlers (or generally the officials) shall be excluded from the proceedings in case of doubt upon their impartiality.

Art. 8 Public administration authorities shall conduct the proceedings in such a manner as to deepen the trust of its participants in the public authorities, abiding by the principles of proportionality, impartiality and equal treatment.

Art. 24 §3 The employee's immediate superior shall be required at his own initiative or that of one of the parties to exclude the employee from the proceedings, if it appears likely that there are circumstances (...), that cast doubt on the impartiality of the employee.

h) Notice and Opportunity to Defend

- i. *Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. *Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. *Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

Article 7.

Public administration bodies shall uphold the rule of law during proceedings and shall take all necessary steps to clarify the facts of a case and to resolve it, having regard to the public interest and the legitimate interests of members of the public.

Article 9.

Public administration bodies are required to provide full and proper information to the parties regarding the factual and legal circumstances which may affect the establishment of their rights and the obligations that are the subject of the administrative proceedings. The bodies shall take care to ensure that parties and other persons involved in proceedings do not suffer any loss owing to ignorance of the law and shall therefore provide the necessary clarifications and advice.

Article 88 of the [Act](#)

1. A party to the proceedings shall be any person against whom proceedings concerning competition-restricting practices are instituted.

2. The President of the Office shall issue a resolution instituting antitrust proceedings and shall notify the parties concerned of this fact.

A basis for a statement of objections has been introduced - Art. 49 (3) of the [Act](#)

Art. 49.3. The decision to initiate the proceedings referred to in section 1, requires justification. The justification includes an explanation of the charges against the entrepreneur and information on the rules for determining the amount of the fine if it is found that the entrepreneur has violated the provisions of the Act.

[Statement of objections](#)

UOKiK improved its internal procedures by introducing the "statement [of objections](#)".

"Detailed justification of the allegations" is the equivalent of the Statement of Objections used by the European Commission and other European competition authorities. The Polish SO aims to raise the standards of procedural fairness, including the right to defense. According

to the assumptions, the SO will be presented to the entrepreneur when UOKiK finishes the stage of gathering the evidence. This document will contain factual and legal justification of the allegations, along with an indication of the evidence on the basis of which the findings were made, so that the party has the opportunity to respond to them before issuing a decision. The introduction of the accusations justification procedure is a response to the demands of academic circles and, above all, entrepreneurs.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Article 50. of the [Act](#):

"Undertakings, non-business persons and legal persons, as well as organizational units that are not legal persons, to which separate regulations grant legal capacity, shall be obliged to provide all necessary information, including the transfer of documents at the request of the President of the Office."

3. Any person shall be entitled to submit, in written form, on their own initiative or upon request of the President of the Office, explanations concerning the essential circumstances of a given case.

(4) An individual to whom the request referred to in paragraph (1) has been addressed may refuse to provide information, including the transfer of documents, only if doing so would expose him or his spouse, ascendants, descendants, siblings and relatives in the same line or degree, as well as persons in a relationship of adoption, guardianship or custody, as well as a person in cohabitation, to criminal liability. The right to refuse to provide information, including the transfer of documents, continues after the cessation of marriage or the termination of the relationship of adoption, guardianship or custody.

(5) Information or documents provided by an individual pursuant to paragraph (1) may not be used to the disadvantage of that person or the persons mentioned in paragraph (4) in proceedings conducted by the President of the Office for the imposition of a fine referred to in Article 106a and Article 106b. This prohibition shall continue after the termination of marriage or the termination of the relationship of adoption, guardianship or custody."

Any person has a right to choose their legal representative, who will represent it before the Office (and a Court) pursuant to the Article 32 of the [Code of Administrative Procedure](#) throughout the entire proceedings:

Article 32.

A party may be represented by an attorney, unless the nature of the cases requires it to enter a personal appearance.

However, based on guidelines on conducting dawn-raids (PL: "Wyjaśnienia dla przedsiębiorców – przeszukania UOKiK"; ENG: "Explanations for entrepreneurs - dawn raids of the UOKiK") issued by the President of the UOKiK, when conducting dawn raids according to a court-ordered search warrant, the investigators do not have to await the arrival of the defense counsel.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

In connection to the Article 8 and 24 of the [Code of Administrative Procedure](#) all matters shall be conducted and settled in writing recorded in paper or electronic form. Letters recorded in paper form shall bear a handwritten signature. Letters recorded in electronic form shall bear a qualified electronic signature, a trusted signature or a personal signature or a qualified electronic seal of the public administration body with the indication of the person who bears the seal in the content of the letter.

Decisions of the UOKiK are in writing and contain a statement of reasons and are served upon the parties together with advice as to the available legal remedies. Moreover, all of the decision are collected on the [UOKiK webpage](#).

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Pursuant to Art. 81 p.1 of the [Act](#), the District Court in Warsaw - the Court of Competition and Consumer Protection (hereafter: SOKiK). SOKiK is a civil court, which reviews appeal cases in their entirety, i.e. makes a fresh determination of the facts and a legal assessment of the case. During the proceedings, before the court, the parties are entitled to the rights typical of civil procedure, in particular the right to present evidence in support of their statements (including new evidence).