

## 2007 Antitrust and Regulatory Developments in Legislation in Poland

by

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### I. Introduction

In 2007, the Polish antitrust law and the particular regulatory regimes applicable to specific sectors of the Polish economy underwent major change. In the context of the antitrust legislation, a new Act of 16 February 2007 on Competition and Consumers Protection<sup>1</sup> was adopted, to be subsequently amended twice in the same year. Simultaneously, a number of key amendments were introduced into sectorial regulation, including: the Act of 10 April 1997 – the Energy Law<sup>2</sup>, the Act of 16 July 2004 – Telecommunication Law<sup>3</sup>, the Act of 28 March 2003 on Rail Transport<sup>4</sup>, and to the Act of 3 July 2002 – Aviation Law<sup>5</sup>. The purpose of this paper is to present the major amendments that were introduced into the Polish antitrust law and regulatory regime in 2007.

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<sup>1</sup> Journal of Laws No. 50, item 331 with subsequent amendments.

<sup>2</sup> Consolidated text in Journal of Laws 2006 No. 89, item 625 with subsequent amendments.

<sup>3</sup> Journal of Laws 2004 No. 171, item 1800 with subsequent amendments

<sup>4</sup> Consolidated text in Journal of Laws 2007 No. 16, item 94.

<sup>5</sup> Consolidated text in Journal of Laws 2006 No. 100, item 696 with subsequent amendments

## II. Act on competition and consumer protection

The subject matter of antitrust law is to govern various factual circumstances relating to a competitive market advantage obtainable by entrepreneurs, used to the detriment of other market players – especially competitors, contractors and consumers. Antitrust law constitutes one of the specific domains of administrative law, used to govern the economy; it belongs to the area of public law. Polish antitrust law remains under a relatively strong influence of EU law<sup>6</sup>. As a result, it continues to be subject to rapid developments, not only because its amendments reflect the constant need to adapt it to the development stage and profile of the market, but also because Polish antitrust law must be continuously adjusted to current EU solutions.

The new Act of 16 February 2007 on Competition and Consumer Protection came into force on 21 April 2007 as the fourth integrated act of law concerning antitrust matters in the Polish post-war history. The specific nature of each of the previous antitrust acts primarily reflected the particular market situation, in relation to which they were applicable. Thus, the first Act of 28 January 1987 on Combating Monopolistic Practices in the National Economy<sup>7</sup> aimed to limit the monopolistic power of state-owned enterprises in the period of the, so called, “second stage of the economic reform” of the still centrally planned Polish economy<sup>8</sup>. The new Act of 26 February 1990 on Combating Monopolistic Practices and Protecting Consumers’ Interests<sup>9</sup>, was one of many instruments of economic transformation intended to support the creation of a free market economy<sup>10</sup>. The following Act of 15 December 2000 on Competition and Consumer Protection<sup>11</sup>, which was adopted during

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<sup>6</sup> About europeization of the Polish antimonopoly law in the different periods of time see for example: T. Skoczny, *Zakres i kierunki dostosowywania polskiego prawa antymonopolowego do europejskich regul konkurencji*, Warszawa 1993, passim; T. Skoczny, *The Polish Competition Law in the 1990s – on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules*, in: *Spontaneous Order, Organization and the Law. Roads to a European Civil Society*. Liber Amicorum Ernst-Joachim Mestmäcker. Edited by Talia Einhorn, T.M.C. Aster Press, The Hague 2003, p. 349-346; M. Stefaniuk, „Wpływ prawa Wspólnoty Europejskiej na publicznoprawne reguły konkurencji w Polsce” [in:] Z. Janku, Z. Leoński, M. Waligórski, K. Wojtczak (eds.), *Europeizacja polskiego prawa administracyjnego*, Wrocław 2005, s. 654-666.

<sup>7</sup> Journal of Laws No. 3, item 18.

<sup>8</sup> J. Trojanek, „Ustawa antymonopolowa z 1987 r. (Próba oceny podstawowych rozwiązań)” (1987) 4 *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 4; compare with W. Modzelewski, *Monopolistyczne praktyki przedsiębiorstw – problematyka prawna*, Warszawa 1988, passim.

<sup>9</sup> Journal of Laws No. 14, item 88 with further amendments.

<sup>10</sup> C. Kosikowski, T. Ławicki, *Ochrona prawna konkurencji i zwalczanie praktyk monopolistycznych*, Warszawa 1994, p. 33-36.

<sup>11</sup> Journal of Laws 2005 No. 244, item 2080; Journal of Laws 2006 No. 157, item 1119.

the period of pre-accession negotiations, was meant to harmonise the Polish antitrust law with Community competition rules<sup>12</sup>.

The need to replace the Act of 2000 can be primarily traced back to the fact that, even though it was considered to be an efficient act of legislation in terms of competition and consumer interest protection, it had, nevertheless, very numerous amendments. As a result, the antitrust Act of 2000 did not seem to form a complete and coherent act of legislation, despite having been published twice in the form of a uniform text<sup>13</sup>. Moreover, some of the rules it contained were regarded as far too detailed, focusing on cases of relatively small impact on competition. Among these were the rules concerning concentrations in the forms defined in Article 12 paragraph 3, and rules involving antitrust authorities in settling cases of minor importance. The Act was particularly related to instituting antitrust proceedings for cases concerning competition restricting practices (Article 84) and cases where collective consumer interests were violated (Article 100 a). Another reason for replacing the antitrust Act of 2000 was the need to implement into the Polish legal system, the procedures stated in the Directive No. 2006/2004/WE of the European Parliament and Council of 27 October 2004 on Cooperation between National Authorities responsible for executing legal regulations within the scope of consumer protection<sup>14</sup>. According to this Directive, Member States were meant to appoint public authorities (liaison offices and competent authorities) appropriate to cooperate in the field of consumer interest protection against cross-border violation of consumer interest<sup>15</sup>.

After an exceptionally rapid legislative process, a new antitrust Act of 2007 was adopted, which largely builds on the solutions present in the Act of 2000. The arrangement of the new Act is identical to the arrangement of the act it replaced. The Act of 2007 is divided into several sections. The number and range of rules contained in each section corresponds to the content of its predecessor – only the numbering of the sections changed. Section One (Articles 1-5) contains general rules. Section Two (Articles 6-12) sets out the prohibition of competition restricting practices – the specific rules concerning

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<sup>12</sup> See: E. Modzelewska-Wąchal, *Ustawa o ochronie konkurencji i konsumentów. Komentarz*, Warszawa 2002, s. 7.

<sup>13</sup> Uniform texts of the act on competition and consumer protection were published in *Journal of Laws* 2002 No. 86 item 804 and *Journal of Laws* 2005 No. 244, item 1080.

<sup>14</sup> OJ [2004] L 364/1..

<sup>15</sup> In view of the regulation No. 2006/2004/WE a cross-border violation is every activity or abandonment contrary to the legal regulations which protect consumer interest and which is prejudicial or might be prejudicial to collective interests of consumers who live in one or more than one Member State – other than a Member State where this activity or abandonment took place, or where the guilty enterprise has its seat, or where evidence or assets related to this activity or abandonment can be found.

the prohibition of competition restricting agreements, the prohibition of abuse of a dominant position and the issue of administrative decisions taken in cases of competition restricting practices, are specified in Chapter One, Chapter Two and Chapter Three of Section Two, respectively. Section Three (Articles 13–23) concerns concentrations – Chapter One of Section Three deals with control of concentrations, Chapter Two concerns the administrative decisions in cases of concentration.

Section Four of the new Act (Articles 24–28) deals with practices violating collective consumer interests. Chapter One of Section Four is devoted to practices violating collective consumer interests, Chapter Two deals with the administrative decisions taken in cases of practices violating collective consumer interests. Section Five of the Act of 2007 (Articles 29–46) governs the organisation of competition and consumer protection - Chapter One of Section Five concerns the statutory position of the President of the Office for Competition and Consumer Protection (hereafter, UOKiK), Chapter 2 governs the role of territorial self-government (a large district [“poviat”] authorities) and consumer organisations in the scope of competition and consumer protection. Section Six of the Act of 2007 (Articles 47–105) provides rules applicable to proceedings held before the President of UOKiK. Aside from a chapter containing general provisions, Section Six contains also three chapters devoted to: antitrust proceedings in cases of competition restricting practices, antitrust proceedings in cases of concentrations, and proceedings in cases of practices violating collective consumer interests. Section Seven of the Act of 2007 (Articles 106–113) deals with fines while Section Eight (Article 114) set out relevant penal provisions. The Act of 2007 closes with rules relating to amendments and transitional and final provisions (Articles 115–138).

The new Act, similarly to the Act of 2000, does not contain a preamble. The objective and extent of its rules is set out in Article 1. According to this provision, the Act stipulates the conditions of developing and protecting competition as well as the principles contributing to the protection of enterprises and consumers in view of public concerns. The Act also governs the principles and procedures of combating competition-restricting practices, practices violating collective consumer interests as well as concentrations of enterprises and their associations, provided that these practices and concentrations have, or may have, an effect on the Polish territory. The provisions also determine bodies competent for cases of competition and consumer protection. Collective labour agreements are excluded from the scope of competition restrictions – the regulations of the new act are not applicable to them.

The new Act does not introduce many changes to the structure and powers of the enforcement authorities. The President of UOKiK is the competent body to assess the cases within the subject matter of the Act. The President is a body

belonging to central government administration, appointed and dismissed by the Prime Minister from among the candidates belonging to the state-staffing pool. Unlike the previous Act, the new Act does not determine the term of office for the President of the Office and does not provide a closed-catalogue of causes for dismissal. Other statutory changes introduced by the Act of 2007 highlight, in Article 29(2), the tasks of the President of UOKiK in terms of exercising EU law. These tasks are connected, most of all, to the performance of the function of “a competent competition protection authority” within the meaning of Article 35 of Regulation No. 1/2003/EC and the function of “a uniform liaison office” and “the competent authority” within the meaning of Regulation No. 2006/2004/WE of the European Parliament and Council. Vice Presidents are appointed also, upon request from the President of UOKiK, by the Prime Minister from among those, belonging to the national reserve of human resources. The Commercial Audit Office is subordinated to the President of UOKiK.

The organisational structure of UOKiK remains unchanged consisting of the Head Office in Warsaw and nine Regional Branch Offices in: Bydgoszcz, Gdańsk, Katowice, Kraków, Lublin, Łódź, Poznań, Warsaw and Wrocław. The territorial and material competence of Regional Branch Offices is stipulated by the Regulation of the Prime Minister of 17 July 2007 on the Territorial and Material Competence of the Regional Branch Offices of the Office for Competition and Consumer Protection<sup>16</sup>. Branch Directors manage their Branch Offices issuing, on behalf of the President of UOKiK, decisions and resolutions within the competence of the branches and in cases delegated by the President of UOKiK. The organisational structure of UOKiK is governed in detail by its Statute confirmed by the Prime Minister’s Regulation No. 65 of 20 June 2007 on approval of the Statute of the Office for Competition and Consumer Protection<sup>17</sup>.

Tasks within the scope of consumer protection are performed, according to Article 37 of the new Act, by territorial self-government bodies (municipalities), consumer organisations and other institutions, whose statutory tasks include consumer interest protection. At the territorial level of a “poviat” (a large district, encompassing several counties), consumer protection tasks are carried out by district consumer ombudsman, appointed and dismissed by the appropriate district council, subordinated to that council and reporting to it. The responsibilities of a district consumer ombudsman include, in particular: offering a free consumer advice service and providing legal information concerning the scope of consumer interest protection; submitting requests for the issue and amendment of local provisions (locally enforced law), where

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<sup>16</sup> Journal of Laws No. 134, item 939

<sup>17</sup> Monitor Polski No. 39, item 451

consumer interest protection is at stake; addressing enterprises in cases concerning protection of consumer rights and interests; and co-operating with the territorially competent UOKiK Regional Branch Offices, bodies of the Commercial Audit Office and consumer organisations. The new act enabled the consumer ombudsmen to work in cities populated by over 100 thousand inhabitants and in towns with district (“poviat”) rights to perform their tasks with the help of an individual office. The National Council of Consumer Ombudsmen, operating at the level of the state, is a standing opinion-giving and advisory body of the President of the Office to the extent of cases related to protection of consumer rights at the level of a large district (“poviat”).

The Act of 2007 does not introduce many changes to the scope of pre-existing material antitrust rules. What has changed, in comparison to the Act of 2000, is the content and substance of the dictionary of statutory terms used in the Act (Article 4) and some of the definitions including: the definition of an enterprise (Article 4.1); a dominant enterprise (Article 4.3); and, a share or assets deal (Article 4.4). A definition of the President of UOKiK was added (Article 4.18) as well as a definition of the EC Treaty (Article 4.19) and of Regulation No. 2006/2004/WE (Article 4.22). Moreover, a new way of converting EURO into Polish Złoty was introduced (Article 5).

Agreements restricting competition and abuse of a dominant position were included in the competition restricting practices category, similarly to the approach applied in the Act of 2000. The statutory definitions of the specific practices did not change; agreements between enterprises, between associations of enterprises as well as between enterprises and their associations were once again considered to constitute agreements restricting competition. It also deemed some stipulations of those agreements, adjustments of any form made by two or more enterprises or their associations and also resolutions and other acts of associations of enterprises or of their governing bodies as competition restricting practices. The legislator defined distribution agreements among other agreements – those concluded between enterprises operating at different levels of business proceedings, whose aim is to buy products in order to sell them later. The Act of 2007 in its Article 7 concerning *de minimis* agreements changes the definition of vertically-integrated enterprises from “enterprises operating at different levels of business turnover” to “enterprises which are not competitors”.

Correspondingly with the Act of 2000, a dominant position is understood as the one that allows an enterprise to prevent competition in the target market effectively by means of creation of possibilities to act independently of competitors, contractors and consumers to some substantial extent; it is assumed that an enterprise has a dominant position, if its market share is in excess of 40%.

The legislator used the rule of prohibition both in the case of the competition restricting agreements and in the case of the abuse of a dominant position. General prohibition of such practises is contained directly in the act and the decision of a law applying authority about treating given practice as competition restricting is of declaratory nature. The prohibition of every competition restricting practice, that had been previously in force, was maintained, too. In the case of competition restricting agreements the prohibition is of relative nature – the institution of minor agreements (Article 7) and a “common sense principle” (legislative rule of reason) were used (Article 8(1)). In the case of abuse of a dominant position on the other hand, the prohibition is of absolute nature. Catalogues of exemplary factual state of affairs that can constitute violation of the prohibition of competition restricting practises, included in Article 6(1) and 9(2) of the new Act, in principle correspond to the parallel catalogues from Article 5(1) and Article 8(2) the Act of 2000. The only difference can be observed in Article 9(2) that does not mention a practice of creation of disturbing conditions for consumers vindicating or claiming their rights.

In respect of the rules on concentrations, as compared to the previous Act, the Act of 2007 limits the scope of the obligation to notify an intended concentration. Two major amendments need to be noted here. The first one concerns the increase in the total turnover threshold (in the financial year prior to the year of notification), which creates the obligation to notify (an increase from a global turnover of 50 million EURO to a global turnover of 1 billion EURO or 50 million in the territory of Poland); by doing so, the legislator resigns from supervising these concentrations that have no major influence on the Polish market. The second change relates to the list of forms of concentration that remain under the supervision of the President of UOKiK. The legislator did not include in Article 13 of the new Act stock or shares deal which leads to obtaining at least 25% of votes at a General Meeting or a General Shareholders’ Meeting, or performing by one person the position of a member of a managing or controlling authority of competitors as well as commencing execution of rights from shares taken or sold without prior notification (on the basis of Article 13(3) and 13(4) of the Act of 2000). On the other hand, a new form of concentration was introduced, concerning assets deal of total value exceeding the equivalent of 10 million EURO.

Unlike in the previous Act, Article 24(1) of the Act of 2007 contains a new general prohibition of practices violating collective consumer interests, defined slightly differently to the past. The legislator uses once more a rather casuistic description of what kind of conduct can be treated as a practice violating collective consumer interests. According to Article 24(2) a practice violating collective consumer interests is understood as any unlawful activity

of an enterprise prejudicial to these interests, especially application of the provisions of templates of agreements entered in the register of stipulations of template agreements that have been pronounced inadmissible as referred to in Article 479<sup>45</sup>, a breach of a duty to provide consumers with reliable, truthful and complete information, unfair or misleading advertising and other acts of unfair competition prejudicial to collective consumer interests.

An aggregated volume of individual consumer interests does not, however, constitute collective consumer interest. Such a flexible definition of the scope of practices violating collective consumer interests could have been justified previously, seeing as the Act of 2000 was based on the supervision principle, whereby a decision of the President of UOKiK considering a practice to be a violation of a collective consumer interest, was constitutive in nature. Currently, however, the general prohibition formulated in Article 24 paragraph 1 of the new Act, should be complemented by a definition that precisely sets out what behaviour and practices violating collective consumer interests are prohibited. The Act of 2007 introduces a possibility of using fines in the case of enterprises that violate collective consumer interests.

The Act of 2007 differs significantly from its predecessor in relation to procedural rules. These amendments can be divided into two groups. The first set of changes is based on the new Article 49, which states that proceedings in the cases of competition restricting practices, proceedings in the cases of practices violating collective consumer interests and in cases involving the imposition of fine are instituted *ex officio*. According to the Act of 2000, all proceedings before the President of UOKiK (except for explanatory proceedings) were instituted on request or *ex officio*. According to the previous Act, the group of entities entitled to institute antitrust proceedings in the cases of competition restricting practices included: enterprises or associations of enterprises, which could prove their legal interests in the case: territorial self-government bodies (municipalities); state inspection bodies; consumer ombudsmen and consumer organisations. The group of entities previously entitled to institute proceedings in the cases of practices violating collective consumer interests included: the Commissioner for Civil Rights Protection, the Insurance Ombudsman, the Consumer Ombudsman and consumer organisations. This new approach aims at improving the efficiency of the operations of UOKiK and enabling its President to commence proceedings only in cases, where the conduct in question has the most destructive impact on competition and consumer rights protected in the public interest. Shorter proceedings should constitute an additional improvement deriving from the new scheme. Despite the fact that all proceedings are now commenced *ex officio*, the Act of 2007 gives everybody a right to bring a complaint concerning breaches of the Act (Articles 87 and 101).

According to Article 10, Article 11(1) and Article 12(1) of the Act of 2007, the President of UOKiK has now a new competence to issue decisions in cases of competition restricting practices, on the basis of a commitment that an enterprise, or an association of undertakings, no longer infringes the prohibition specified in Article 6 or Article 9 of this Act, or in Article 81 or Article 82 of the EC Treaty. A separate group of new procedural rules (applicable to both, antitrust proceedings and proceedings in the cases of collective consumer interests violations) is made up by the Act's provisions enabling the President of UOKiK to perform the function of "a competent authority" and "a single liaison office" in accordance with Regulations No. 1/2003/EC and No. 2006/2004/EC<sup>18</sup>.

The key change in the context of the administrative decisions taken in cases of competition restricting practices and collective consumer interest violations is the fact that the new Act does not contain regulations concerning decisions which do not assess competition restricting practices or practices violating collective consumer interests. In such cases the new Act introduces the institution of discontinuing proceedings on the basis of KPA (Code of Administrative Proceedings) due to groundless nature of a case.

After its adoption, the Act of 2007 was amended twice in 2007. The first change was introduced by the Act of 13 April 2007 on amending the act on competition and consumer protection and the act on the national reserve of human resources and high state positions.<sup>19</sup> On its basis, the provisions of Article 29(1) of the Act of 2007 provide that the Prime Minister appoints the President of UOKiK from among candidates belonging to the state staffing pool.. Accordingly, paragraphs 5, 7 and 8 of Article 29 were omitted since they referred to the application procedure of the revoked rule. The Act of 2007 was further amended by the Act of 23 August 2007 on counteracting unfair market practices<sup>20</sup>. On its basis, unfair market practices, referred to in Article 24(2) of the Act of 2007, are now recognised as one of the types of practices that violate collective consumer interests. At the same time, the principle was introduced into Article 25 of the Act of 2007, according to which, the protection of collective consumer interests does not exclude protection under other legal regulations – especially those on combating unfair market practices.

Summing up, the provisions of the new Act of 2007 on competition and consumer protection largely reflect the evolution, rather than revolution, of the development process of the Polish antitrust law system. These changes are not particularly profound, illustrating the need to rearrange the text of

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<sup>18</sup> See Article 62(2(1)) and 62(2(2)), Article 73(2(3)) and 73(2(4)) of the Act on Competition and Consumer Protection.

<sup>19</sup> Journal of Laws No. 99, item 660.

<sup>20</sup> Journal of Laws No. 171, item 1206.

the Polish antitrust law, and further adjust it to EU solutions, rather than the will to implement bold new reformatory ideas. In contrast, such a moderate approach to the development of the Polish antitrust law has its unqualified advantages. Firstly, it allows the utilisation of a big part of the jurisprudence accumulated in the six years of the application of the Act of 2000. Secondly, the careful nature of the legislator's approach to the scope of the recent changes leads to the assumption that the content of the Polish antitrust law will slowly stabilise (institutionalise). As a result, a new approach that focuses on continuing the creation of institutions specific to the Polish antitrust system (strictly connected with the specific nature of its market and legal system) will perhaps accompany, or even replace, the old approach entailing the creation of specific legislation that often determines the patterns of prohibited and permissible conduct of enterprise in an arbitrary and instrumental manner.

### III. Act – Energy Law

The regulatory regime concerning the Polish power industry underwent major changes in 2007. These amendments reflect, most importantly, the growing need to ensure energy safety; the implementation of the liberalisation process of the energy market and, in particular, the “third party access” rule; and the development of energy production in co-generation and from renewable sources. The direction of the changes in the regulatory regime of the Polish power industry was determined mostly by the developmental trends of the EU.

The Polish power industry is primarily governed by the Act of 10 April 1997<sup>21</sup> – the Energy Law. This Act was amended five times in 2007 alone. The first set of amendments was brought about by the Act of 12 January 2007 on amending the Energy Law Act, the Environmental Protection Law Act and the Act on the Conformity Assessment System<sup>22</sup>; these changes came into force on 24 February 2007. The Amendment Act of 12 January 2007 added a number of new legal definitions to Article 3 of the Polish Energy Law: the notion of co-generation (point 33), useful heat in co-generation (point 36), referential efficiency value for divided production (point 37), high pressure co-generation (point 38), standard consumption profile (point 39), commercial balancing (point 40), the central mechanism of commercial balancing (point 41), and the entity responsible for commercial balancing (point 42).

Another area of change introduced to the Polish Energy Law by the Amendment Act of 12 January 2007 relates to agreements on electricity

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<sup>21</sup> Journal of Laws No. 158, item 1123, as amended.

<sup>22</sup> Journal of Laws No. 21, item 124.

distribution services, where one party of the agreement is a user of the system, who is not an entity responsible for commercial balancing. Pursuant to Article 5(2a) added to the Act, such an agreement should also include other various elements in the case when the user of the system is a recipient (point 1), an energy company which produces electrical energy and is connected to the distribution network (point 2) or a seller (point 3). Article 5(2b) governs additional elements of agreements on electrical energy distribution services, where one party of the agreements is a recipient who is not an entity responsible for commercial balancing.

The Amendment Act of 12 January 2007 further added paragraph 6a and 6b to Article 5 of the Energy Law concerning the information duties of electricity sellers. Pursuant to Article 6a, an electricity seller is now obliged to inform its recipients of the make-up of the energy sources used to produce its electricity (in the previous calendar year) as well as of the location of information on the environmental impact that production (at least with respect of carbon dioxide emission and the production of nuclear waste). In turn, Article 6b concerns the situation when electrical energy is bought on a commodity exchange or is imported from the electroenergetic system of the countries that are not Member States of the European Union. In such situations, information concerning the make-up of the energy sources used to produce electricity can be provided on the basis of collective data concerning the proportion of particular types of energy sources used in the previous calendar year.

In relation to rules concerning the fees for network connection, the Amendment Act of 12 January 2007 added point 3 to the existing Article 7(8) of the Polish Energy Law. Accordingly, the fee collected for connecting the energy sources cooperating with the network, and the networks of energy companies taking care of transmission and distribution of gas fuels or energy, is calculated on the basis of the expenditures actually incurred when establishing the connection.

Moreover, paragraph 5 was added to Article 9a of the Energy Law stating that substitute fees (referred to in Article 9a(1(2)) and Article 9a(8(2))) constitute the income of the National Fund for Environmental Protection and Water Management and should be paid in arrears on the separated accounts of this fund until 31 March of each year.

Paragraph 9 and 10 were further added to Article 9a. Pursuant to Article 9a(9), the Minister responsible for the economy was authorised to determine the range of duties placed on energy companies that deal with the production of electrical energy or sales connected with it, and sell this power to the final recipients connected to the network within the territory of Poland. These duties are related to: obtaining from the President of the Energy Regulatory Office (URE), or applying for the discontinuation of, of

the certificate of origin referred to in Article 9a(1(1)); or paying the substitute fee referred to in Article 9a(1(2)); the purchase of electrical energy produced from renewable energy sources connected to the network within the area of operation of the seller, offered by the energy companies who obtained a licence for its production; and the purchase of the offered heat, referred to in Article 9a(7) of the Energy Law. In turn, Article 9a(10) contains an authorisation for the Minister dealing with the economy to determine the manner of calculating the data, which must be provided in the application form for the certificate of origin from co-generation, referred to in paragraph 8, and the duty concerning the confirmation of the data, referred to in Article 91(8) of the Energy Law.

Point 9a was added to Article 9c paragraph 2 of the Energy Law obliging the operator of an electro-energetic transmission system, or a connected electro-energetic system in the frame of a transmission system, to maintain a central mechanism of commercial balancing.

Point 6 was added to Article 9c(3) of the Energy Law obliging the operator of a distribution system, or a connected electro-energetic system in the scope of distribution systems, to balance the system. The operator was also obliged to carry out the operations referred to in Article 9c(3(9a)) of the Energy Law, which allow the execution of contracts for the sale of electricity concluded by recipients connected to the network.

The amended Article 9e(3) of the Energy Law made the President of URE responsible for issuing certificates of origin for energy produced from renewable sources. Such certificates are issued upon application of the energy company that produces electrical power from renewable energy sources. Issuing a certificate of origin is governed by the appropriate rules of the Code of Administrative Procedure concerning certification. Further detailed rules concerning the issue of certificates of origin are contained in paragraph 4a, 4b and 5a added to Article 9e and in its amended paragraph 5.

Paragraph 5a was added to Article 9g of the Energy Law. Accordingly, the operator of an electro-energetic distribution system is obliged to supply a log of transmission and exploitation of the distribution network, using the standard profile of consumption used in commercial balancing, and information concerning the location of the supply of electrical energy to its recipients with contractual power below 40 kW.

Article 91 consists of new rules relating to the certificate of origin of electricity produced in high pressure co-generation. Such a certificate can be issued by the President of URE upon an application by an energy company. Such certificate is issued within 14 days from the date of receipt of the application. Issuing certificates of origin of electrical energy produced from co-generation is governed by the appropriate rules of the Polish Code of Administrative Procedure concerning certification. The content of the

application is governed by Article 91(4) of the Energy Law. Article 91(5) concerns the data that must be included in the application form. Paragraphs 6-8 govern the procedure for submission of the application to the President of URE. Paragraph 9 governs the right to refuse to issue a certificate of origin from co-generation, which takes the form of a resolution of the President of URE, subject to appeal. Paragraphs 10-11 govern the issue of reports concerning the production of electrical energy in co-generation presented to the President of URE by energy companies. Article 91(13) and 91(14) of the Energy Law relate to the discontinuation of certificates of origin from co-generation by the President URE.

Article 9n of the Energy Law imposes on the Minister responsible for the economy an obligation to prepare a report every 4 years assessing the progress of increasing the proportion of electrical energy produced in high pressure co-generation in comparison to the total national production of electrical energy, and to present them to the European Commission within the stated time. The preparation of each report is announced in the Polish Official Journal "Monitor Polski" [Polish Monitor] by 21 February of each year, in which the obligation to prepare it arises. According to the provisions of Article 9n(3) of the Energy Law, the Minister responsible for the economy informs the European Commission of the actions taken in order to facilitate access to the electro-energetic system by energy companies producing electrical energy in high pressure co-generation and in co-generation units with the installed electrical energy capacity above 1 MW.

Another amendment can be found in the new wording of Article 16a(3) and the addition of Article 16(3a) of the Energy Law which concern: tender proceedings organised by the President of URE for the construction of new production facilities of electrical energy or for the implementation of projects, which decrease the demand for electrical energy; the conditions and procedures of organising and conducting tenders, including the appointment and operation of tender commissions, taking into consideration the necessity to assure clear tender conditions and criteria as well as equal treatment of bidders.

Amended was also Article 20(2) of the Energy Law, regarding the planning of heating, electrical energy and gas fuel supply to the whole of, or part of, the area of the municipality, prepared by the vojt (mayor or president of the city). In compliance with the new point 1a, the project resulting from such a plan should contain proposals regarding the use of renewable energy sources and high pressure co-generation.

The Amendment Act of 12 January 2007 broadened the scope of operation of the President of URE specified in Article 23(2) of the Energy Law by the charges receivable as individual substitute fees referred to in Article 9a(8a(3(e))) and issuing certificates of origin referred to in Article 9e(1) and

certificates of origin from co-generation referred to in Article 91 as well as their discontinuation (point 21).

This Amendment Act introduced also a change to the rules on obtaining a licence necessary to act in the power industry. Pursuant to the amended Article 32(1(1)) of the Energy Law, obtaining a licence requires conducting economic activity in respect of the production of fuels or energy, excluding: the production of solid or gas fuels, producing electrical energy in from sources with total installed electrical energy capacity below 50 MW, not included in renewable energy sources, or from sources producing electrical energy in co-generation, producing heat in the sources with the total installed heat power capacity below 5 MW.

The amended Article 47(2e) of the Energy Law imposes on the President of URE the obligation to analyse and verify the justifiable costs (specified in article 45(1(1)) and 45(1(2)) of this Act) in terms of their compliance with its rules. Such assessment must be based on financial statements as well as tangible, asset-related and financial plans of energy companies.

The final changes introduced into the Polish Energy Law by the Amendment Act of 12 January 2007 concern fines. According to Article 56, the liability to pay a fine arises for those: who do not abide by the obligation to receive, and present for discontinuation, to the President of URE a certificate of origin from co-generation, or who do not pay replacement fees (specified in Article 9a(1) and (8) of the Energy Law); or who do not abide by the obligation to buy electrical energy (specified in Article 9a(6) of the Energy Law); or who do not abide by the obligation to buy heat (specified in Article 9a(7) of the Energy Law); or who submit to the President of URE a motion to grant a certificate of origin or a certificate of origin from co-generation that includes incorrect data or information.

The second set of amendments that came into force on 7 April 2007, was introduced by the Act dated 16 February 2007 on the reserves of oil, oil products and natural gas, as well as the rules of conduct in situations threatening the country's fuel security and disturbances on the oil market<sup>23</sup>. Amendments to the Polish Energy Law introduced by this Act can be classified into three categories, they concern: statutory definitions, rules on power security, and licences for natural gas sales with foreign countries.

Article 3 of the Energy Law was complemented by a new point 10a, which includes a definition of "a storage installation" understood to be an installation used for storing gas fuels, including container-less natural gas storage and the storage capacities of gas pipelines, owned by an energy company or being exploited by such company, including this part of the installation with

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<sup>23</sup> Journal of Laws No. 52, item 343.

condensed gas, which is used for its storage, excluding however this part of the installation, which is used for production, or the installation used exclusively to execute tasks by the operators of the gas transmission system.

Articles 9j, 11 and 15b of the Energy Law Act were amended to improve the country's power security. Article 9j paragraph 1 sets out the obligations of energy companies producing electrical energy and connected to an electrical network. Pursuant to this rule, in order to ensure the security of the functioning of the electrical system, such a company is obliged to produce electrical energy or stay in readiness to produce it, if that is necessary to ensure the quality of the supplied power, and the continuance and reliability of the supply of this power to users, or the avoidance of a threat to personal security or threat of material loss. Article 9j(2) sets out the obligations of an operator of a transmission system in the case of a sudden, unforeseen damage to, or destruction of equipment, installation, network or buildings, causing a break in the usage thereof, or the loss of their qualities threatening the security of the functioning of the electrical system. In such a case, an operator of a transmission system undertakes, in co-operation with interested entities, actions necessary to restore the normal functioning of this system in accordance with the procedures specified in Article 9g(6) of the Energy Law Act. Such actions consist of; producing electrical energy or remaining in readiness to produce it; activating additional power production units; introducing restrictions, or putting a stop the consumption of electrical energy in a specified part of the Polish territory. According to Article 9j(4), an operator of an electrical transmission system is also obliged to immediately notify the Minister responsible for economy and the President of URE about the occurrence of any of the incidents specified in paragraph 2. According to Article 9j(5), costs incurred by an energy company connected with the implementation of these obligations are classified as costs of its business activity, as specified in Article 45(1) of the Energy Law Act.

Article 11 introduces rules aiming to restrict the sale of solid fuels and the supply and consumption of electrical energy or heat, in specified circumstances. These cases may include a threat to Poland's electrical security consisting of: long-term imbalance in the fuel-energy market, threats to personal security, or threats of considerable material loss. In such cases, time-limits on the sale of solid fuels, as well as on the supply and consumption of electrical energy or heat, may be introduced covering the whole, or a part of the territory of Poland. a restriction on the sale of solid fuels translates into the need to gain an authorisation for a user to buy specified quantities of fuels. A restriction on the supply and consumption of electrical energy or heat translate into a limit placed on the maximum consumption of electrical energy and daily consumption of electrical energy, and on the supplies of heat. Entities authorised to control the application of these restrictions include: the President of URE – with

reference to electrical energy supplied via electrical systems; the governors of particular provinces (“voivodeships”)– with reference to solid fuels or heat; and inspectorate bodies and authorities responsible for the regulation of fuel-energy economy, as specified in Article 21a. Article 11 of the Energy Law includes also an authorisation for the Council of Ministers to specify specific rules and the process of introducing restrictions on the sale of solid fuels and on the supply and consumption of electrical energy or heat. The Minister responsible for the economy should immediately notify the European Commission if such steps were taken.

Where the threat specified in Article 11(1) manifests itself, the Council of Ministers may introduce restrictions on the sale of solid fuels and on the supply and consumption of electrical energy or heating that are applicable for a specified period of time to the whole, or only a part, of the territory of Poland. Energy companies are not liable for the consequences of such restrictions introduced by the Council of Ministers. However, the Minister responsible for the economy must immediately notify the European Commission and the Member States of the European Free Trade Association (parties to the agreement on the European Economic Area) about the restrictions introduced, specified in paragraph 7, in respect to the supply and consumption of electrical energy, by the Council of Ministers by virtue of Article 11(7) of the Energy Law.

Another amendment concerns the content of Article 15b(2(11)) of the Energy Law, which sets out the extent of information that must be provided in the report on the results of the inspection of the security of natural gas and electrical energy supply, prepared by the Minister responsible for economy. In the wording, this Article obliges the Minister to report actions undertaken and restrictions introduced (specified in the Act of 16 February 2007 on the reserves of oil, oil products and natural gas) as well as the rules of conduct in cases of threats to the country’s fuel security and disturbances on the oil market and their impact on the competitive conditions on the natural gas market.

The Act of 16 February 2007 also regulated matters concerning licences for natural gas sales with foreign countries. According to the wording of Article 33 of the Energy Law, the President of URE grants a licence for natural gas sales with foreign countries to applicants, who have their own stock capacities, or have signed a preliminary agreement on rendering a service consisting of storing obligatory reserves of natural gas in the territory of Poland, in quantities specified in Article 15b(2(11)). According to Article 35(1a) of the Energy Law Act, an entity applying for such a licence should (besides other information specified in Article 35(1) of the Energy Law Act) state predicted quantities of natural gas delivery and the means of holding obligatory reserves of natural gas in the Polish territory. According to Article 41(2a) of the Energy

Law Act, the President of URE withdraws licences for natural gas sales with foreign countries, when an energy company acting in this field fails to hold obligatory reserves of natural gas, or makes them unavailable.

The third set of amendments to the Polish Energy Law that came into force on 29 June 2007 was introduced by the Act of 15 June 2007 concerning the revision of the Energy Law Act<sup>24</sup>. The new Article 5b deals with a situation where a part, which is not connected with distribution activities, is separated from a vertically integrated enterprise that functions as an operator of a distribution system, and then used as a non-cash contribution to cover the share capital of another enterprise before 1 July 2007. As a result, by virtue of the law, a change occurs in the agreements on the basis of which the vertically-integrated enterprise (acting as an operator of a distribution system) sells electrical energy to its final customers and provides its transmission or distribution services. By virtue of the law, from the day of the separation and contribution of the said part, these agreements change into contracts between the recipients of electrical energy and the energy company carrying out economic activity in electrical energy sales, to which the non-cash contribution was made. The day when the non-cash contribution is made, is regarded as the day of separation. Energy companies acting as operators of distribution systems are obliged to immediately notify the Prime Minister about the date of the separation. Furthermore, Article 5b(3), imposes a joint responsibility for obligations resulting from agreements that arose before the date of the separation on vertically-integrated enterprises acting as an operator of a distribution system, from which a part that is not connected with distribution, was separated and energy companies carrying out economic activity in the form of electrical energy sales, which received a non-cash contribution. Article 4 provides that final customers may terminate such an agreement, without bearing any additional costs, by way a written notice of termination submitted to the energy company carrying out activities in electrical energy sales. The agreement is terminated on the last day of the second month following the month, in which the notice reached the energy company. Within 3 months of the separation, such a vertically-integrated enterprise must notify its final customers about the fact of the separation and about the possibility, effects and date of lodging a termination notice.

The fourth set of amendments to the Polish Energy Law that came into force on 1 July 2007 was introduced by the Act of 4 March 2005 – Energy Law and the Act – Environment Protection Law<sup>25</sup>. This way, a right applicable to all energy recipients to choose the supplier of electrical energy and gas serving was introduced, in accordance with the Directive No. 2003/54/WE and the

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<sup>24</sup> Journal of Laws No 115, item 720.

<sup>25</sup> Journal of Laws No 62, item 552.

Directive No. 2003/55/WE of the European Parliament and European Council. As a result the “third party access” rule has been extended to individual recipients, including households. This principle gives receivers an opportunity to take advantage of the transmission infrastructure of a local operator, without the need to buy energy from him. The right to choose the supplier is therefore matched by the duties which, from now on, rest on: energy companies dealing with transmission or distribution of gas fuels or energy; enterprises dealing with transport of extracted natural gas; energy companies dealing with natural gas liquefaction or regasification of liquefied natural gas using liquefied natural gas systems; energy companies dealing with the production of electrical energy or its sale, selling this energy to final customers connected to the network on the territory of Poland; and the operators of electrical energy transmission, distribution and integrated systems.

Article 4 item 2 of the Energy Law imposes on energy companies dealing with the transmission or distribution of gas fuel or energy, the duty to ensure the provision of transmission or distribution services of gas fuels or energy, pursuant to the principles and within the range specified in this Act, to all the recipients and enterprises dealing with the sale of gas fuels on the basis of the equal treatment principle. Providing transmission or distribution services of such fuels or energy is carried out on the basis of an agreement for such services.

Article 4d places on an enterprise dealing with the transport of extracted natural gas the duty to ensure that the provision to its recipients and enterprises dealing with the sale of gas fuels, of transportation services, using the mine pipeline network to the place of their appropriation (selected by the recipient or the enterprise dealing with the sale of gas fuels), is carried out according to the equal treatment principle. This must be achieved in observance of the principles of safety, exploitation of deposits connected, execution of agreements for the sale of ore, and considering accessible or possible to obtain flow capacity of mine gas pipeline networks, as well as the requirements of environmental protection. Providing natural gas transportation services is carried out on the basis of an agreement concerning the provision of such services.

Article 4e places on an energy company the duty to ensure (if necessary for technical or economic reasons) that the provision to its recipients, and enterprises dealing with the sales of gas fuels, of the services of natural gas liquefaction or regasification of liquefied natural gas using liquefied natural gas systems, is carried out according to the equal treatment principle. Providing these services is carried out on the basis of an agreement for natural gas liquefaction.

According to Article 4j, the recipients of gas fuels or energy have the right to independently select the seller from whom to buy such fuels or energy.

Paragraph 8 and paragraphs 8a-8d were added to Article 9a. They govern the duty of an energy company dealing with the production or sale of electrical energy and selling this power to final recipients connected to its network within the Polish territory, to obtain, from the President of URE, or apply for the discontinuation of, a certificate of origin from co-generation (referred to in Article 91(1) of the Energy Law) for electrical energy produced in co-generation units within the Polish territory, or alternatively, the duty to pay a substitute fee.

The amended paragraphs 6 and 7 of Article 9c impose two duties for operators of electro-energetic systems. Firstly, priority is given to providing transmission and distribution services for electrical energy produced from renewable energy sources and high-pressure co-generation, while the reliability and safety of the national electro-energetic system must be maintained (paragraph 6). The second duty concerns receiving electricity produced in high-pressure co-generation in the sources within the Polish territory connected directly to the network of this operator (paragraph 7).

Article 9d(1) of the Energy Law imposes on a vertically integrated operator of a transmission, distribution and integrated system, a duty to maintain independence with regard to its legal and organisational form as well as, as far as making decisions concerning other activities, that is, activities not connected with the transmission, distribution or storage of gas fuels or the liquefaction of natural gas, or transmitting or distribution of electrical energy. Paragraph 2 determines personal, structural and functional criteria concerning the independence of operators.

Article 9i(2) of the Energy Law imposes on the President of URE the task to invite bids as well as organise and perform tenders in order to select sellers *ex officio*. Only energy companies with a licence to sell gas fuels or electrical energy can take part in such a tender.

The fifth group of amendments to the Polish Energy law that came into force on 4 August 2007 was introduced by the Act of 29 June 2007 on the rules of covering costs arising in producers in connection with the early termination of long-term agreements on the sale of energy and electrical power<sup>26</sup>.

It should be noted that since its adoption in 1997, the Energy Law has been amended 37 times. The changes made so far have not yet fully liberalised the Polish energy system. Whereas the amendments have contributed to the improvement of Poland's energy security, the implementation of the "third party access" rule, the promotion of energy produced by renewable sources and co-generation, the amendments have also led to a change and strengthening of the position of the President of URE. His tasks and competences have been

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<sup>26</sup> Journal of Laws No. 130, item 905.

adjusted to EU laws. The President has received legal instruments facilitating the inspection of the growth of the Polish energy market; Polish administrative and juridical practice continue to have at their disposal still underdeveloped instruments for shaping the consciousness and sensitivity of energy users. Of need of further regulation are also various aspects of regional and local energy policy to be implemented by local governments.

The great number of amendments introduced in 2007 to the Polish Energy Law justifies the preparation and announcement of an updated uniform text of this Act.

#### **IV. Act – Telecommunication Law**

The Polish telecoms sector is primarily governed by the Act of 16 July 2004 – the Telecommunication Law, which has undergone five major amendments in 2007 alone. The first changes were introduced by the Act of 17 November 2006 on the Conformity Assessment System for products intended for the State's defenses and security<sup>27</sup>. On its basis, a new Article 152a was added to the Telecommunication Law according to which, the provisions of the Act of 17 November 2006 govern the requirements for that equipment, including final users' telecoms equipment and radio devices, which is intended for the State's defenses and security. This amendment took effect on 1 January 2007. The following Act of 15 December 2006 on Amendments to the Act on the Conformity Assessment System and Amendments to some of other Acts<sup>28</sup> brings forward technical alterations to Articles 152-158, Articles 199-200 and Article 209 of the Telecommunication Law. These amendments came into force on 7 January 2007.

Another set of amendments derives from the Act of 12 January 2007 on amendments to the Act – Telecommunication Law<sup>29</sup> that introduced changes to frequency booking rules. Articles 114–116, Articles 118–119, Articles 122–123, Article 126, Article 185 and Article 188 of the Telecommunication Law were all amended on the basis of the Act of 12 January 2007, while Articles 118a–118d were added. These amendments took effect on 26 February 2007.

The Act of 16 February 2007 on Competition and Consumers Protection amended Article 1(3) of the Telecommunication Law. On its basis, the Telecommunication Law takes effect without prejudice to the rules on competition and consumers protection and the provisions contained in the

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<sup>27</sup> Journal of Laws No. 235, item 1700.

<sup>28</sup> Journal of Laws No. 249, item 1834.

<sup>29</sup> Journal of Laws No. 23, item 137.

Act of 29 December 1992 on Radio and Television Broadcasting<sup>30</sup>. The Act of 2007 on competition and consumers protection defines also the notion of the relevant market, which is used in the Telecommunication Law in relation to the target market in the meaning of the rules on competition and consumers protection. These amendments came into force on 21 April 2007.

Last but not the least, the Act of 13 April 2007 on Electromagnetic Compatibility<sup>31</sup> introduced a series of amendments to the Telecommunication Law regarding the rules on electromagnetic compatibility of radio devices and final users' telecommunication equipment. On its basis, the Telecommunication Law was extended to include: Article 1 clause 11, Article 2, Article 51 (revoked), Article 148, Articles 152–153, Article 156, Article 158, Article 200 and Articles 204–205. These amendments took effect on 20 July 2007.

## V. Act on Rail Transport

The Act of 28 March 2003 on Rail Transport was amended twice in 2007. The first set came into force under the Act of 24 August 2007 on Amendments to some Acts of Law due to the European Union Accession of the Republic of Poland<sup>32</sup>. On this basis, eight articles of the Act on Rail Transport were changed, all relating to the licensing of rail-related business activities. Article 4 clause 9 defines a rail carrier as an “enterprise that has been licensed to perform rail transport or to render railway services”. The same articles was supplemented with clause 9a, which defines railway services as business operations entailing the provision of a railway carriage along with rail transport services.

The amended Article 43 states that business operations taking the form of rail transport or railway services are subject to a licence. This licence is a proof that a company is a railway carrier in the territory of Poland and the Member States of the European Union or the European Free Trade Association Member States – parties to the Agreement on the European Economic Area. A licence is issued for an unlimited period of time. When a licence is suspended or revoked, due to failure to meet the requirements for financial credibility, the President of the Rail Transport Office (UTK) may issue a provisional licence to make it possible to introduce the necessary changes to the company, provided that this will not affect the safety of its business operations. A provisional licence expires after 6 months from the date of its issue.

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<sup>30</sup> Uniform Text in Journal of Laws of 2004, No 253, item 2531 with subsequent amendments.

<sup>31</sup> Journal of Laws No. 82, item 556.

<sup>32</sup> Journal of Laws No. 176, item 1238.

According to Article 45, the President of UTK is competent to issue, refuse, alter, suspend or revoke a licence. The President performs these duties in the form of an administrative decision. The Minister responsible for transport specifies the licence application procedure and the procedure for the assessment of a licence application as well as licence templates. A licence fee is collected in an amount not exceeding two thousand euro. The President of UTK may refuse, revoke, suspend a licence due to exposure to possible threats to the State's defences or security or other public concerns.

The Act on Rail Transport was also supplemented by Article 51a which states, that a licensed rail carrier is obliged to notify the President of the Rail Transport Office of changes, which may affect its legal status including, but not limited to, mergers or buy-outs of assets as well as share deals. If the President finds a threat to the safety of the carrier's business operations resulting from such changes, he may request a licence to be resubmitted for reconsideration and approval purposes. In view of Article 51a(2) and (3) a request for a licence to be resubmitted may be issued when a carrier notifies the President of its intention to change or extend his business operations (mandatory), or when it has not engaged in licensed operations for 6 months, or it has not commenced such operations within 6 months of the date of issue of a licence (optionally).

Article 52 was supplemented by paragraph 1a containing rules on licence suspension; paragraph 2 governing licence invalidation was amended. Paragraph 5 was added imposing the obligation to notify the European Commission of the issue, invalidation, suspension or alteration of a licence, which the President of the Rail Transport Office must execute without delay. Paragraph 6 was also added, which governs cases when the President states that a rail carrier, which holds a licence from a competent body of another Member State of the European Union or European Free Trade Association, does nevertheless not meet Polish licensing requirements. In such cases, the President is obliged to notify that fact without delay to the competent authority of this Member State.

All the aforementioned amendments came into force on 9 October 2007.

The second set of amendments to the Act on Rail Transport that came into force in 2007 was introduced by the Act of 19 September 2007 on amendments to the act on rail transport and some other acts<sup>33</sup>. Three issues were affected by this Act. Firstly, several new statutory definitions were added to Article 4 of the Act on Rail Transport including the definition of: a railway (Clause 2), a state railway (Clause 2a), a rail area (Clause 8), a siding (Clause 10), and regional rail liners (Clause 20). Definitions of a railroad (Clause 1a) and a siding user

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<sup>33</sup> Journal of Laws No. 191, item 1374.

(Clause 10a) were added. Secondly, the Amendment Act of 19 September 2007 supplemented the Act on Rail Transport with a new chapter 2b entitled “Detailed Development Guidelines for State Railway Hard Projects” (Articles 9n-9ad). These rules govern the process of developing state railway investment projects. They concern, in particular, conditions relating to the location and right-of-way land acquisitions; they also define competent bodies.

The Act of 19 September 2007 also introduced some minor amendments to Article 14(2), Article 18(1), Article 19. Moreover, Article 66 contains amended rules governing pecuniary penalties imposed, by the President of the Rail Transport Office in the form of administrative decisions, on enterprises violating the provisions of the Act on Rail Transport. The upper limit of the pecuniary penalty was lowered to the equivalent to 2% of the annual revenue in the last calendar year. The President may, however, decide against imposing a pecuniary penalty, if an enterprise has made up for the effects of its law violation.

The aforementioned amendments came into force on 1 November 2007.

## **VI. Act – Aviation Law**

The Act of 3 July 2002 – Aviation Law had in 2007 three amendments. One group of amendments was enforced under the Act of 16 February 2007 on Competition and Consumers Protection. Article 123 of this act amended Article 198(6), Article 203(1) and 205a(3). The amendments govern rights and duties of the President of the Civil Aviation Office (ULC) in case of discovering the breach of the competition and consumers protection provisions concerning applicability of the competition and consumers protection provisions to air transport and relations between the responsibilities and competences of the President of ULC and the President of the Office for Competition and Consumers Protection. The said amendments took effect on 21 April 2007

Another set of amendments to the Aviation Law was introduced by the Act of 13 April 2007 on Amendments to the Act on the Border Guard and some other Acts<sup>34</sup>. On its basis, the Aviation Law was supplemented by Article 186a according to which, an air carrier must have the border guards on board during flights defined by the President of the Civil Aviation Office as high risk. The air carrier bears the cost incurred, in the amount specified in paragraph 2 of this Article. The Council of Ministers (the Cabinet) is empowered to specify, in which cases must the Border Guard officers be provided with accommodation

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<sup>34</sup> Journal of Laws No. 82, item 558.

and set out the accommodation expenses reimbursement procedure applicable to cases, when an air carrier does not provide such accommodation. These amendments came into force on 10 June 2007.

Another set of amendments was introduced by the Act of 8 December 2006 on the Polish Air Liner Agency<sup>35</sup>. These amendments first of all govern conditions and methods of performance of functions resulting from the control and command in the Polish air space and air liner services in compliance with the European Union's law and its regulations governing the Single European Air Space, international agreements and international regulations and Polish law and its regulations. In this respect, Articles 4, 5 and 21 of the Aviation Law were amended. Furthermore, Article 77(2) of the Aviation Law was changed, which governs announcements in the Official Journal of the Civil Aviation Office and the Integrated Information Bulletin of air transport fees, approved by its President.

Section VI Chapter 1 of the Aviation Law was supplemented by a new Article 118a, which states that air liners in the Polish air space and the air space that comes within the Polish responsibility conforms with EU law and its regulations governing the Single European Air Space, international agreements and international regulations and Polish law and its implementing regulations.

Article 120 amended paragraphs 1-5 governing the accessibility of the Polish air space for air liners, institutions providing air liners with air transport services, and civil or military air transport authorities, civil air transport authorities operating in the space controlled, established by bodies managing airports of civil aviation authorities operating in the out-of-control space assigned to certain airports, military aviation authorities operating in the space assigned to a certain airport .

The amended Article 121 concerns air transport management in the Polish air space – providing air liner services appropriate to the nature, traffic volume, and conditions of air transport, air space management, and air traffic volume management. Paragraph 2 of this Article also introduces the principle according to which, aircrafts performing flights in the Polish air space are provided with search and rescue services.

According to the amended Article 122 of the Aviation Law, users of the Polish air space are obligated to immediately perform orders of institutions providing air transport services, civil and military air transport authorities, air defense command authorities and military aircrafts.

According to Article 122a, an aircraft may be shot down under general provisions of the Act of 12 October 1990 on State Border Guard, if that is

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<sup>35</sup> Journal of Laws No. 249, item 1829.

necessary for defense reasons, and the air defense command authority is given information (in particular by institutions providing air transport services) suggesting that a civil aircraft is being used to violate the law with the purpose, among other things, of performing a terrorist attack<sup>36</sup>.

Article 124 prohibits flights by engine-driven aircrafts over national parks and natural reserves, below a certain altitude, set out by institutions providing air transport services.

The amended Articles 127 and 128 of the Aviation Law concern the appointment and certification of institutions providing air liner services in the Polish air space, in compliance with EU law. Article 130 governs navigation fees referred to in EU law in the context of the Single European Air Space, international agreements and international law. Such navigation fees are approved by the President of the Civil Aviation Office.

The Aviation Law was also supplemented by Section Xia entitled “Pecuniary Penalties” (Article 209a–209e).

The aforementioned amendments came into force on 1 April 2007.

## VII. Conclusion

2007 was a year of quite comprehensive and frequent changes to the Polish antitrust law and the particular regulatory regimes applicable to specific sectors of the Polish economy. The amendments introduced in the domain of antitrust law were not very deep, they were, nevertheless, very comprehensive, seeing as a new Act on Competition and Consumer Protection was adopted. Still, the Act of 2007 does not depart much from its predecessor. The major amendments introduced under this Act concern procedural issues. In contrast, the amendments made in 2007 to the regulatory regime governing the principal foundations, operational grounds and activities of regulatory bodies concerning specific sectors of the Polish economy, were much deeper in nature. The extent and direction of these amendments reflects Community development trends for regulatory acts applicable to specific branches of the industry.

Such amendment policy may raise objections. For instance, very shortly after adopting the Act of 17 November 2006 on Conformity Assessment System for products intended for the State’s defenses and security<sup>37</sup>, the Act of 15 December 2006 on Amendments to the Act on Conformity Assessment System and some other Acts came into force<sup>38</sup>. The former took effect on 1st January

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<sup>36</sup> Journal of Laws 2005 No. 226, item 1944.

<sup>37</sup> Journal of Laws No. 235, item 1700.

<sup>38</sup> Journal of Laws No. 249, item 1834.

2007, the latter, on 7 January 2007. In practice, most amendments are not followed by the publication of a uniform text of the given legislation. It bears noting that in some sectors of the economy (for instance, the power engineering industry), the number of amendments made to its regulatory regimes justifies the development of a revised draft of a new Energy Law Act.

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