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ACT

of 15 December 2000

on competition and consumer protection

(consolidated text)

Title I

General provisions

Article 1. 1. The Act determines conditions for the development and protection of competition as well as the rules on protection of interests of entrepreneurs and consumers, undertaken in the public interest.

2. The Act regulates rules and measures of counteracting competition restricting practices and practices violating collective consumer interests, as well as anticompetitive concentrations of entrepreneurs and associations of thereof, where such practices or concentrations cause or may cause effects on the territory of the Republic of Poland.

3. The Act also defines the authorities competent in competition and consumer protection issues.

Article 2. 1. The Act is without prejudice to the rights vested based on provisions concerning protection of intellectual and industrial property rights, in particular provisions on the protection of inventions, decorative and industrial patterns, topography of integrated circuits, trade marks, geographic designations, copyright and neighbouring rights.

2. The Act shall apply to the concluded between entrepreneurs:

- 1) agreements, in particular licensing agreements, as well as to other practices of exercising rights referred to in section 1;
- 2) agreements concerning information undisclosed to the general public, related to:
 - a) technical and technological information,
 - b) rules of organisation and management- in relation to which steps were taken in order to prevent their disclosure, where such agreements result in the unjustified limitation of freedom of business activity of the parties, or in significant restriction of competition on the market.

Article 3. Provisions of the Act shall not apply to:

- 1) restrictions of competition exempted by virtue of separate legal acts,
- 2) collective labour agreements.

Article 4. For the purpose of this Act:

- 1) "entrepreneur" – shall have the same meaning as under the provisions of the Act of 19 November 1999 – Law on business activity (J.L. of 1999, No 101, item 1178 and of 2000, No 86, item 958, and No 114, item 1193, of 2001, No 49, item 509, No 67, item 679, No 102, item 1115, and No 147, item 1643, and of 2002, No 1, item 2, No 115, item 995, and No 130, item 1112), as well as:
 - a) natural and legal person as well as organisational unit without legal status, organising or rendering services of public utility nature, which are not business activity in the meaning of provisions on business activity,
 - b) natural person exercising profession on its own behalf and account or performing activity in the frame of exercising such profession,

- c) natural person being in a possession of stocks or shares ensuring at least 25% of votes in organs of at least one entrepreneur or having control, in the meaning of item 13, over at least one entrepreneur, even if not conducting business activity in the meaning of provisions on business activity, provided that this person is undertaking further activities subject to control of concentrations, referred to in Article 12;
- 2) "associations of entrepreneurs" shall mean chambers, associations and other organisations associating entrepreneurs referred to under item 1 as well as associations thereof;
- 3) "dominant entrepreneur" shall mean the entrepreneur that:
- disposes, directly or indirectly, of the majority of votes at the assembly of partners or at the general assembly, also in the capacity of a depositary or user, or in the managing organ of the other (dependent) entrepreneur, also on the basis of agreements concluded with other persons, or
 - is empowered to appoint or recall the majority of members of the management or of the supervisory board of another entrepreneur (dependent) also on the basis of agreements concluded with other persons, or
 - members of its management board or supervisory board constitute more than one half of members of the management board of another entrepreneur (subsidiary entrepreneur), or
 - disposes directly or indirectly of the majority of votes in dependent personal company or at the general assembly of dependent co-operative, also on the basis of agreements concluded with other persons, or
 - has a decisive impact on the activities of another (dependent) entrepreneur, in particular pursuant to agreement stipulating managing another (dependent) entrepreneur or remitting by him profit;
- 4) "agreements" shall mean:
- agreements concluded between entrepreneurs, between associations thereof and between entrepreneurs and their associations, or certain provisions of such agreements,
 - concerted practices undertaken in any form by two or more entrepreneurs or associations thereof,
 - resolutions or other acts of the associations of entrepreneurs or their statutory organs;
- 5) "distribution agreements" shall mean agreements concluded between entrepreneurs acting at the different levels of the economic process aimed at purchase of products for further resale;
- 6) "products" shall mean goods as well as all forms of energy, securities and other property rights, services as well as construction works;
- 7) "prices" shall mean prices including also charges in the nature of prices, profit margins, commissions and mark-ups;
- 8) "relevant market" shall mean market of products, which by reason of their intended use, price and characteristics, including quality, are regarded by the buyers as substitutes, and are offered on the area in which, by reason of their nature and characteristics, existence of market access barriers, consumer preferences, significant differences in prices and transport costs, the conditions of competition are sufficiently homogeneous;
- 9) "dominant position" shall mean position of the entrepreneur which allows him to prevent the efficient competition on the relevant market thus enabling him to act in a significant degree independently from competitors, contracting parties and consumers; it is assumed that entrepreneur holds a dominant position where his market share exceeds 40%;
- 10) "competitors" shall mean entrepreneurs which at the same time release or may release for free circulation, purchase or may purchase products on the relevant market;
- 11) "consumer" shall be understood to mean 'a consumer' as defined by the provisions of the Act, dated 23 April 1964, titled the Polish Civil Code (Journal of Laws No. 16, item 93, as amended thereafter²⁾);

²⁾ Amendments to the said Act as published in JL: of 1971, No. 27, item 252; of 1976, No. 19, item 122; of 1982, No. 11, item 81, No. 19, item 147, and No. 30, item 210; of 1984 No. 45, item 242; of 1985 No. 22, item 99; of 1989, No. 3, item 11; of 1990, No. 34, item 198; No. 55, item 321, and No. 79, item 464; of 1991, No. 107, item 464 and No. 115, item 496; of 1993, No. 17, item 78; of 1994, No. 27, item 96, No. 85, item 388, and No. 105, item 509; of 1995, No. 83, item 417; of 1996, No. 114, item 542, No. 139, item 646, and No. 149, item 703; of 1997, No. 43, item 272, No. 115, item 741, No. 117, item 751, and No. 157, item 1040; of 1998, No. 106, item 668, and No. 117, item 758; of 1999, No. 52, item 532; of 2000, No. 22, item 271, No. 74, items 855 and 857, No. 88, item 983, and No. 114, item 1191; of 2001, No. 11, item 91, No. 71, item 733, No. 130, item 1450, and No. 145, item 1638; of 2002 No. 113, item 984, and No. 141, item 1176; of 2003, No. 49, item 408, No. 60, item 535, No. 64, item 592, and No. 124, item 1151, and of 2004, No. 91, item 870.

- 12) "consumer organisations" the term shall be understood to mean civic organisations, independent of entrepreneurs and of associations thereof, which statutory tasks include the protection of consumer interests; the consumer organisations may run business activities, according to general rules, provided the benefits serve solely to finance the execution of the organisations' statutory tasks;
- 13) "taking over control" any form of direct or indirect acquisition of powers which, individually or jointly, taking into account all legal or factual circumstances, enable to exercise decisive influence upon given entrepreneur or entrepreneurs; in particular, such powers are created by:
 - a) ownership of entirety or part of the property of the entrepreneur,
 - b) rights or agreements according decisive influence upon composition, voting or decisions of the entrepreneur's organs;
- 14) "capital group" shall be understood to mean all entrepreneurs, who act under the direct or indirect supervision of one entrepreneur, including the entrepreneur;
- 15) "income" shall mean income attained in the taxation year preceding the day of initiating the proceedings by virtue of the present Act, in the meaning of income tax provisions binding the entrepreneur;
- 16) "average salary" shall mean average monthly wages within the industry sector in the last month of a quarter preceding the day of issuance of a decision of the President of the Office for Competition and Consumer Protection, published by the President of the Central Bureau for Statistics pursuant to separate provisions;
- 17) (an enterprise's) "business secret" shall be understood to mean 'business secret' as defined by Article 11, clause 4 of the Act, dated 16 April 1993, on combating unfair competition (JL of 2003, No. 153, item 1503);
- 18) 'Regulation 1/2003/EC' shall be understood to mean the Regulation [No.] 1/2003/EC, dated 16th December 2002, regarding the entry into force of provisions on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.01.2003);
- 19) 'Regulation 139/2004/EC' shall be understood to mean the Regulation [No.] 139/2004/EC, dated 20th January 2004, on the control of concentrations between entrepreneurs (OJ L 024, 29.01.2004, p.1 ff.).

Title II

Prohibition of competition restricting practices

Chapter I

Prohibition of competition restricting agreements

Article 5. 1. The agreements which have as their object or effect elimination, restriction or any other infringement of competition on the relevant market shall be prohibited, in particular those consisting in:

- 1) fixing, directly or indirectly, prices and other conditions of purchase or sales of products,
- 2) limiting or controlling production or supply as well as technical development or investments,
- 3) sharing markets of supply or purchase,
- 4) application in similar transactions with third parties onerous or not homogenous contract terms, thus creating for these parties diversified conditions of competition,
- 5) making conclusion of an agreement subject to acceptance or fulfilment by the other party of another performance, having neither substantial nor customary relation with the subject of the agreement,
- 6) limiting access to the market or eliminating from the market entrepreneurs which are not party to the agreement,
- 7) collusion between entrepreneurs entering a tender, or by those entrepreneurs and the entrepreneur being the tender organiser, of the terms and conditions of bids to be proposed, particularly as regards the scope of works and the price.

2. The agreements referred to in section 1 shall be in their entirety or in the respective part null and void, with the reservation of Articles 6 and 7.

Article 6. 1. The prohibition of agreements referred to in Article 5 shall not apply to:

- 1) agreements concluded between competitors which combined market share in the year preceding calendar year in which such agreement is concluded does not exceed 5%,
 - 2) agreements concluded between entrepreneurs acting at different levels of the economic process which combined market share in the year preceding calendar year in which such agreement is concluded does not exceed 10%.
2. Exemptions referred to in clause 1 shall not apply to cases determined in Article 5, clause 1, item 1 – 3, and 7..

Article 7. 1. The Council of Ministers may, by way of a regulation, exempt from the prohibition stipulated in Article 5, agreements which contribute to improvement of the production, distribution of products or to technical or economic progress and ensure to the buyer or user fair share of benefits resulting thereof, and which:

- 1) do not impose upon the entrepreneurs concerned restrictions which are not indispensable to the achievement of these objectives;
 - 2) do not afford these entrepreneurs the possibility to eliminate competition on the relevant market in respect of a substantial part of the products in question.
2. In the regulation referred to in section 1, the Council of Ministers shall define:
- 1) conditions which are to be satisfied for the agreement to be considered exempted from the prohibition;
 - 2) clauses which existence is not considered to infringe Article 5;
 - 3) clauses which existence constitutes the infringement of Article 5;
 - 4) period during which the exemption shall apply.

Chapter II

Prohibition of abuse of a dominant position

Article 8. 1. The abuse of a dominant position on the relevant market by one or more entrepreneurs shall be prohibited.

2. The abuse of a dominant position may, in particular consist in:

- 1) direct or indirect imposition of unfair prices, including predatory prices or prices glaringly low, significantly delayed payment terms or other conditions of purchase or sale of products,
- 2) limiting production, supply or technical development to the detriment of contractors or consumers,
- 3) application in similar transactions with third parties onerous or not homogenous contract terms, thus creating for these parties diversified conditions of competition,
- 4) making conclusion of the agreement subject to acceptance or fulfilment by the other party of another performance having neither substantial nor customary relation with the subject of agreement,
- 5) counteracting formation of conditions necessary for emergence or development of the competition,
- 6) imposition by the entrepreneur of onerous contract conditions, yielding to this entrepreneur unjustified profits,
- 7) creating for consumers onerous conditions of redress,
- 8) division of market according to territorial, product, or entity-related criteria.

3. Legal actions which constitute abuse of a dominant position shall be in their entirety or in the respective part null and void.

Chapter III

Decisions in cases of competition restricting practices

Article 9. The President of the Office for Competition and Consumer Protection, hereinafter referred to as "the President of the Office", shall issue the decision assessing the practice as restricting the competition and ordering to refrain from it where he finds the infringement of the prohibition defined in Article 5 in the scope not exempted pursuant to Articles 6 and 7, or infringement of Article 8.

Article 10. 1. The decision referred to in Article 9 shall not be issued if the market behaviour of the entrepreneur or association thereof does no longer infringe the provisions of Article 5 or Article 8, in particular by reason of the permanent decrease of their market share.

2. In the case referred to in section 1, the President of the Office shall issue a decision assessing the practice as restricting competition and shall declare it discontinued.

3. The burden of proof in relation to the circumstances referred to in section 1 shall rest on the entrepreneur or association thereof.

Article 11. 1. Where the President of the Office shall not find the infringement of Article 5 or Article 8, he shall issue a decision stating that the practice restricting competition has not been applied.

2. The decision referred to in section 1 shall be issued by the President of the Office also in the case where the agreement meets the conditions referred to in Article 7 section 1 but is not covered by the Regulation of the Council of Ministers referred to in Article 7.

3. The burden of providing evidence to circumstances referred to in clause 2 shall rest upon an entrepreneur or an association of entrepreneurs.

Article 11a. 1. In the event that, in the course of antimonopoly proceedings, it has been rendered plausible – on the basis of the circumstances of a given case, information comprised in the application or one forming the basis for instituting *ex officio* proceedings – that the ban referred to in Article 5 or Article 8 has been infringed, whereas the entrepreneur or association of entrepreneurs being charged with having infringed the said ban has agreed to take or discontinue certain actions aiming at preventing those infringements, then the President of the Office may, by way of a decision, impose upon the entrepreneur or association of entrepreneurs an obligation to exercise the undertaken commitments.

2. In the decision referred to in clause 1, the President of the Office may determine the final date(s) for realisation of the commitments.

3. In the decision referred to in clause 1, the President of the Office shall impose upon the entrepreneur or association of entrepreneurs an obligation to provide, within fixed date(s), information regarding the degree of implementation of the assumed commitments.

4. In the event that a decision, referred to in clause 1, is issued, Articles 9 to 11 and Article 101, clause 1, item 1 and 2 shall not apply, subject to clause 7.

5. The President of the Office may, on an *ex officio* basis, reverse a decision referred to in clause 1, in the event that:

- 1) it has been issued on the basis of false, incomplete or misleading information or documents;
- 2) the entrepreneur or association of entrepreneurs has not carried out commitments and obligations imposed thereupon in the decision referred to in clauses 1 to 3.

6. The President of the Office may, upon consent of the entrepreneur or association of entrepreneurs, repeal the decision referred to in clause 1, on an *ex officio* basis, in case that the circumstances, that may have an impact on the issuance of the decision, have changed.

7. In the event that the decision is reversed, the President of the Office shall adjudicate on the merits.

Title III

Concentration of entrepreneurs

Chapter I

Control of concentration

Article 12. 1. The intention of concentration is subject to the notification to the President of the Office in the case where combined turnover of the entrepreneurs participating in the concentration in the marketing year preceding the year of the notification exceeds 50 million EURO.

2. The obligation referred to in section 1 concerns the intention of:

- 1) merger of two or more independent entrepreneurs,
- 2) taking over – by way of acquisition or entering into a possession of stocks, other securities, shares, of the entirety or a part of the property or in any other way obtaining direct or indirect control over one or several entrepreneurs,
- 3) creation by entrepreneurs of one joint entrepreneur.

3. The obligation to notify the intention of concentration referred to in section 1 shall also apply to:

- 1) taking over or acquisition of stocks or shares of another entrepreneur resulting in achieving at least 25% of votes at a general assembly or assembly of partners,
- 1) assuming by the same person the function of a member of the managing or controlling body of the competing entrepreneurs,
- 2) initiating to exercise the rights arising from stocks or shares taken over or acquired without prior notification in accordance with Article 13, items 3 and 4.

Article 13. The obligation to notify the intention of concentration shall not apply where:

- 1) the turnover of the entrepreneur:
 - a) over which the control is to be taken in accordance to Article 12, section 2, item 2,
 - b) whose stocks or shares are to be taken over or acquired as defined in Article 12, section 3, item 1,
 - c) whose rights to stocks or shares are to be exercised in accordance with Article 12, section 3, item 3- did not exceed, on the territory of the Republic of Poland, during any of two marketing years preceding the notification the equivalent of 10 million EURO;
- 2) (repealed);
- 3) the financial institution, the normal activities of which include investing in stocks and shares of other entrepreneurs, for its own account or for the account of others, acquires on a temporary basis stocks and shares with a view to reselling them provided that such resale takes place within one year of the date of acquisition and that:
 - a) this institution does not exercise the rights arising from these stocks or shares, except from the right to dividend, or
 - b) exercises these rights solely in order to prepare the resale of the entirety or a part of the entrepreneurs, its property, or these stocks and shares;
- 4) the entrepreneur acquires on a temporary basis stocks and shares with a view to securing debts, provided that such entrepreneur does not exercise the rights arising from these stocks or shares, except from the right to sell;
- 5) arising as an effect of insolvency proceedings, except from the operations where the control is to be taken over by a competitor or a participant of the capital group to which belong the competitors of the to-be-taken entrepreneur;
- 6) concentration of the entrepreneurs participating in the same capital group.

Article 13a. The provision of Article 13, item 1 shall not apply in case of concentrations resulting from which dominant position has emerged or strengthened in the market wherein the concentration takes place.

Article 14. The concentration performed by a dependent entrepreneur is considered as performed by a dominant entrepreneur.

Article 15. The turnover referred to in Article 12, section 1 and Article 13, item 1 shall include the turnover of entrepreneurs directly participating in the concentration as well as of the remaining entrepreneurs participating in the capital groups in which entrepreneurs directly taking part in the concentration participate.

Article 16. The Council of Ministers shall define, by way of a regulation, the method of calculating turnover referred to in Article 12, section 1 and Article 13, item 1 taking into account specificity of the activity conducted by entrepreneurs, in particular accountancy rules applicable to individual entrepreneurs, including banks, insurers and investment funds.

Chapter II

Decisions in cases of concentration

Article 17. President of the Office shall, by way of decision, issue a consent to perform a concentration, which shall not result in restrictions to competition in the market, in particular, by emergence or strengthening of dominant position in the market.

Article 18. 1. The President of the Office shall, by way of a decision, issue a consent for concentration when, upon fulfilment of conditions set in clause 2 by entrepreneurs intending to effect the concentration, the competition in the market will not be significantly restricted, in particular by emergence or strengthening of dominant position.

2. The President of the Office may impose upon the entrepreneur or entrepreneurs intending to perform the concentration an obligation, or accept their obligation, in particular:

- 1) to divest the entirety or a part of the property of one or more entrepreneurs,
 - 2) to divest control over an entrepreneur or entrepreneurs, in particular by divesting a set of stocks or shares, or to dismiss one or several entrepreneurs from the position in the management/ or supervisory board,
 - 3) to grant competitor an exclusive licence
- determining in the decision referred to in section 1 the time limit for meeting the requirements.

3. In the decisions referred to in section 1, the President of the Office shall impose upon the entrepreneur or entrepreneurs the obligation to provide information about fulfilment of such requirements, in a time limit appointed in the decision.

Article 19. 1. The President of the Office shall, by way of a decision, prohibit that a concentration be effected, if it shall result in significant restriction of the competition in the market, in particular by emergence or strengthening of dominant position.

2. The President of the Office shall, by way of a decision, issue a consent to perform a concentration resulting from which competition in the market will be significantly restricted, in particular by emergence or strengthening of dominant position, in any case that desistance from banning concentration is justifiable, and in particular:

- 1) the concentration is expected to contribute to economic development or technological progress;
- 2) it may exert a positive impact on the national economy.

Article 20. 1. The President of the Office may withdraw the decisions referred to in Article 17, Article 18, section 1 and Article 19, section 2 if they were based on unreliable information for which entrepreneurs participating in the concentration were responsible or where entrepreneurs did not comply with conditions referred to in Article 18, section 2 and 3. In the case of withdrawal of the decision the President of the Office shall pronounce on the merit of the case.

2. Where, in the cases referred to in section 1, the concentration is already performed and restitution of the competition on the market is otherwise impossible, the President of the Office may, by way of a decision, defining time limit for its implementation under conditions defined in the decision, order in particular:

- 1) separation of the merged entrepreneur under conditions defined in the decision;
- 2) divestiture of the entirety or a part of the entrepreneur's property;
- 3) divestiture of stocks or shares ensuring the control over the entrepreneur or entrepreneurs or dissolution of the company over which the entrepreneurs have joint control;
- 4) recalling from the function of the member of a managing or controlling body of the entrepreneurs participating in the concentration.

3. The decision referred to in section 2 cannot be issued after the lapse of 5 years since the day the concentration was performed.

4. The provisions of clause 2 and 3 shall apply respectively, in cases whereby the intention to concentrate has not been notified to the President of the Office, as stipulated in Article 12, clause 1, and when the decision banning the concentration has not been respected.

Article 21. 1. Decisions referred to in Article 17, Article 18, clause 1, or in Article 19, clause 2 shall expire if within two (2) years of their issuance date, the concentration has not been effected.

2. The President of the Office may, upon request of an entrepreneur participating in a concentration, prolongate, by way of a decision [*resp.* ruling], the date, referred to in clause 1, by one (1) year, in case the entrepreneur has proved that no change has occurred as to the circumstance resulting from which the concentration may cause a significant restriction of competition in the market

3. Before taking a decision on extension of the date, as referred to in clause 1, the President of the Office may carry out explanatory proceedings.

4. The decision regarding refusal to extend the date, as referred to in clause 1, shall be subject to complaint.

5. In the event that a decision has been issued refusing an extension of the date, as referred to in clause 1, performing a concentration upon lapse of the time limit concerned shall require that the intent to effect the concentration be notified to the President of the Office, and that a consent be obtained for effecting thereof, under the rules and by the procedure as determined in this Act.

Article 22. The President of the Office, upon a motion of the financial institution, may extend, by way of a decision, the time limit referred to in Article 13, item 3 where it will prove that resale of stocks or shares was not possible or economically unjustified before the lapse of one year since their acquisition.

Article 23. The Registry court, acting pursuant to the separate provisions, shall make entry into the register where:

- 1) the President of the Office shall, by way of a decision, give permission to perform the concentration;
- 2) the entrepreneur proves that the intention of concentration is not subject to notification.

Title IIIa

Prohibition of practices infringing collective consumer interests

Chapter 1

Practices infringing collective consumer interests

Article 23a. 1. A practice infringing collective consumer interests shall mean any unlawful activity of an entrepreneur prejudicial to these interests. The sum total of individual consumer interests shall not be a collective consumer interest.

2. A practice infringing collective consumer interests shall mean in particular the employment of provisions of standard forms of contacts entered in the register of provisions of standard forms of contract that have been pronounced inadmissible, referred to in Article 479⁴⁵ of the Code of Civil Procedure, a breach of the duty to provide consumers with reliable, truthful and complete information, unfair or misleading advertising, and other acts of unfair competition prejudicial to collective consumer interest.

Article 23b. The protection of collective consumer interests provided for in this Act shall be without prejudice to protection under other Acts, including without limitation the provisions on suppressing unfair

competition. Provisions of this Act shall not apply to cases of pronouncing provisions of a standard form of contract inadmissible.

Chapter 2

Decisions on practices infringing collective consumer interests

Article 23c. 1. The President of the Office shall, in a decision on pronouncing a practice as infringing collective consumer interests, order that the same be discontinued.

2. The President of the Office may, in the decision referred to in paragraph 1, identify measures for removing lasting effects of the infringement of collective consumer interests with a view to ensuring compliance with the order, in particular bind the entrepreneur to issue a single or recurring declaration with such contents and in such form as may be prescribed in the decision. The President of the Office may also order the decision to be published in its entirety or in part at the expense of the entrepreneur.

Article 23d. In the absence of the circumstances referred to in Article 23a, the President of the Office shall issue a decision stating that a given practice does not infringe collective consumer interests.

Article 23e. 1. A decision recognising a given practice as one infringing collective interests of consumers, and thus ordering discontinuance of its use, shall not be issued if the entrepreneur concerned has ceased to use the practice referred to in Art. 23a.

2. In a case as determined in clause 1, the President of the Office shall issue a decision recognising a given practice as one infringing collective interests of consumers, and thus stating the discontinuance of use thereof.

3. The burden of providing evidence to circumstances referred to in clause 1 above shall rest upon the entrepreneur concerned.

Article 23f. 1. If in the course of proceedings regarding practices infringing collective interests of consumers, it has been rendered plausible – on the basis of the circumstances of a given case, information comprised in the application or the one forming basis for instituting ex officio proceedings – that the entrepreneur concerned uses the practice referred to in Article 23a, whereas the entrepreneur has allegedly infringed the said provision, has undertaken to take or discontinue certain actions aiming at preventing those infringements, then the President of the Office may, by way of a decision, impose an obligation to actually exercise the undertaken commitments.

2. In the decision referred to in clause 1, the President of the Office may determine the final date(s) for implementing the undertaken commitments.

3. In the decision referred to in clause 1, the President of the Office shall impose upon the entrepreneur an obligation to provide, within fixed date(s), information regarding the degree of implementation of the assumed commitments.

4. In the event that a decision referred to in clause 1 is issued, Articles 23c to 23e shall not apply, subject to clause 7.

5. The President of the Office may, on an ex officio basis, reverse a decision referred to in clause 1, in the event that:

- 1) it has been issued on the basis of false, incomplete or misleading information or documents;
- 2) the entrepreneur has not fulfilled commitments and obligations imposed thereupon in the decision referred to in clauses 1 to 3.

6. The President of the Office may, upon consent of the entrepreneur concerned, reverse the decision referred to in clause 1, on an ex officio basis, in case the circumstances, that may have a significant impact on the issuance of such a decision, have changed.

7. In the event that the decision is reversed, the President of the Office shall adjudicate on the merits of the case.

Title IV

Organisation of competition and consumer protection

Chapter 1

The President of the Office

Article 24. 1. The President of the Office shall be the central government administration organ competent in the protection of competition and consumers. The Prime Minister shall supervise activities of the President of the Office.

1a. The President of the Office is an authority exercising tasks superimposed upon the authorities of the Member States of the European Union, pursuant to Articles 84 and 85 of the Treaty establishing the European Community (OJ C 325, 24.12.2002), hereinafter referred to as the 'CE Treaty'. In particular, the President of the Office shall be the competent competition protection authority, as stipulated in Article 35 of Regulation 1/2003/EC.

2. The Prime Minister shall appoint, for the period of 5 years, the President of the Office, selected by way of a contest, from among the persons with university education, in particular in the field of law, economy or business administration, distinguished by their theoretical knowledge and practical experience in the scope of market economy and competition and consumer protection.

3. The Prime Minister shall define, by way of a regulation, mode and procedures for organising the competition referred to in section 2. The Prime Minister shall define composition of the selection board and exigencies towards members thereof, having in mind the necessity to ensure impartiality of the election of the President.

4. The member of the selection board may not be a person who within the last three years was performing function in the organs of the entrepreneur being in possession of a dominant position or was representing his interest, or a person not giving a guarantee of impartiality in performance of the function in public interest.

5. The President of the Office may be dismissed by the Prime Minister before the term of office in the case of:

- 1) assuming relation of work, with the exception of employment as professor at the university or in scientific institution;
- 2) undertaking business activity in a capacity of entrepreneur or assuming function of a member of managing or controlling body of the entrepreneur;
- 3) condemnation by a lawful judgement for the offence committed in deliberate guilt;
- 4) flagrant infringement of his responsibilities;
- 5) permanent illnesses which prevent from fulfilling duties;
- 6) resigning of his office.

6. The President of the Office shall perform his tasks supported by the Office for Competition and Consumer Protection, hereinafter referred to as "the Office".

Article 25. The Prime Minister shall appoint and dismiss Vice-Presidents of the Office, upon a motion of the President of the Office.

Article 26. The scope of the activities of the President of the Office shall include:

- 1) exercising control over the observance by entrepreneurs of the provisions of the present Act,
- 2) issuance, in the cases stipulated in the Act, of decisions in the matters of counteracting competition restricting practices, concentrations or separations of entrepreneurs, infringements of collective consumer rights, as well as decisions concerning financial penalties,
- 3) conducting studies on the concentration level in the economy and on the market behaviour of entrepreneurs,
- 4) elaboration of the draft government programmes for the development of the competition and of the draft government consumer protection policy,
- 5) monitoring the state aid granted to the entrepreneurs pursuant to separate acts and provisions,
- 6) assessment of the efficiency and effectiveness of the state aid granted to the entrepreneurs as well as of the effects of granted aid in the field of competition,

- 6a) co-operation with other authorities or bodies whose scope of operation includes protection of competition and consumers,
- 7) co-operation with foreign and international organisations and authorities in the scope of competition protection,
- 7a) exercise of tasks and competencies of a competition protection authority of a Member State of the European Union, as determined in Regulation 1/2003/EC, and Regulation 139/2004/EC,
- 8) elaboration and submission to the Council of Ministers of the draft legal acts concerning competition restricting practices, development of competition or conditions for its emergence as well as protection of consumer interests,
- 9) giving an opinion on draft legal acts concerning competition restricting practices, development of competition or conditions for its emergence as well as protection of consumer interests,
- 10) submitting to the Council of Ministers periodical reports on the enforcement of the government programmes for competition development and consumer policy,
- 11) addressing entrepreneurs and associations thereof on matters relating to the protection of the rights and interests of consumers,
- 12) undertaking of any actions ensuing from the provisions regarding the combating of unfair competition and provisions regarding illicit contractual provisions,
- 13) addressing specialised units and relevant bodies of the State supervision for undertaking control of observance of consumer rights,
- 14) surveillance over the safety of products intended for consumer use in the scope of the provisions on the general product safety,
- 14a)⁽²⁾ monitoring the system of controlling products introduced on the market, in relation to their compliance with essential requirements, accordingly to the Act dated 30 August 2002, on conformity assessment system (J. L. No 166, item 1360, and of 2003, No 80, item 718, No 130, item 1188, No 170, item 1652),
- 15) co-operation with the territorial self-government authorities and with national and international social organisations and other institutions which statutory tasks include the protection of consumer interests,
- 16) giving assistance to the self-government authorities on voivodship (provincial) and powiat (district) levels and to organisations which statutory tasks include protection of consumer interests, in the scope of the government consumer policy,
- 17) initiating checks on products and services to be performed by consumer organisations,
- 18) elaborating and editing publications and educational programmes promoting awareness of consumer rights,
- 19) enforcement of the international obligations of the Republic of Poland in the scope of co-operation and exchange of the information in the field of competition protection and state aid granted to the entrepreneurs,
- 20) collecting and disseminating judgements pronounced in the cases in the field of competition and consumer protection,
- 21) performance of other tasks defined by the present Act or by separate acts.

Article 26a. President of the Office for Competition and Consumer Protection cooperates with the Head of the National Criminal Information Centre within the scope essential for the fulfilment of statutory tasks.

Article 27. 1. The President of the Office shall issue the Official Journal of the Office for Competition and Consumer Protection.

2. The decisions and resolutions of the President of the Office, as well as judgements of the District Court in Warsaw – the Court for Competition and Consumer Protection, hereinafter referred to as “Court for competition and consumer protection” and of the Supreme Court in cases of cassation of the judgements of the Court for competition and consumer protection, or their sentences with the omission of information constituting business secrecy of the undertaking and of other secrecy protected under separate provisions, may be in their entirety or part published in the Official Journal of the Office for Competition and Consumer Protection.

3. In the Official Journal of the Office for Competition and Consumer Protection shall be also published information, communications, notices, explanations and interpretations having significant

importance for the application of the provisions encompassed by the scope of the activities of the President of the Office.

Article 28. 1. The Office shall be composed of the Head Office in Warszawa and of the Office branch offices in Bydgoszcz, Gdańsk, Katowice, Kraków, Lublin, Łódź, Poznań, Warszawa and Wrocław.

2. The branch office shall be managed by their directors.

3. The Prime Minister shall determine, by way of a regulation, territorial and material jurisdiction of the branch offices in the scope of the activities of the President of the Office, taking into consideration character and number of cases arising on the relevant territory.

4. In addition to the matters within their jurisdiction the branch offices may deal with other cases entrusted by the President of the Office.

5. In particularly justified circumstances the President of the Office may take over the case within the jurisdiction of a given branch office or delegate it to be dealt with by the indicated branch office.

6. Decisions and resolutions within the jurisdiction of branch offices and in cases delegated by the President of the Office pursuant to section 5, are issued by the directors of delegations on behalf of the President of the Office.

Article 29. The organisation of the Office shall be defined by the statute granted by the Prime Minister, by way of a regulation.

Article 29a. 1. Council for Good Economic Practices shall be established, as an opinion-making and advisory body to the President of the Office.

2. The tasks of the Council shall include, in particular:

- 1) presentation of proposals and opinions concerning amendments to the provisions regarding protection of competition and consumers;
- 2) preparation of studies concerning the state-of-play as to protection of competition and consumers in individual sectors of the economy;
- 3) promoting out-of-court consumer dispute resolution procedures, in particular conciliation and mediation;
- 4) expressing opinions concerning good economic practices.

Article 29b. 1. The Council for Good Economic Practices shall be composed of fifteen (15) members, as appointed from amongst:

- 1) individuals representing consumer organisations and milieus – a total of five (5) members;
- 2) individuals representing entrepreneurial organisations and milieus – a total of five (5) members;
- 3) individuals being distinguished by their knowledge, expertise and experience as regards protection of competition and consumers – a total of five (5) members.

2. Members of the Council for Good Economic Practices shall be appointed and dismissed by the President of the Office.

3. The works of the Council shall be managed by the President of the Office.

4. The procedure of works of the Council shall be determined by the Rules-and-Regulations determined by the President of the Office.

Article 29c. 1. Administrative and financial assistance to the Council shall be provided by the Office.

2. Members of the Council are entitled to reimbursement of travel and other public transport expenses within the territory of Poland, as determined in the provisions of Article 77⁵, Para. 2, of the Act dated 26th June 1974, titled The Polish Labour Code (JL of 1998, No. 21, item 94, as amended thereafter³⁾).

Article 30. 1. The Trade Inspection shall be subordinated to the President of the Office.

³⁾ Amendments to the said Act as published in JL: of 1998, No. 106, item 668 and No. 113, item 717; of 1999, No. 99, item 1152; of 2000, No. 19, item 239, No. 43, item 489, No. 107, item 1127, and No. 120, item 1268; of 2001, No. 11, item 84, No. 28, item 301, No. 52, item 538, No. 99, item 1075, No. 111, item 1194, No. 123, item 1354, No. 128, item 1405, and No. 154, item 1805; of 2002, No. 74, item 676, No. 135, item 1146, No. 196, item 1660, No. 199, item 1673, and No. 200, item 1679; and, of 2003, No. 166, item 1608, and No. 213, item 2081.

2. The President of the Office shall sanction the policy of the Trade Inspection and the draft plans of inspections of national dimensions submitted by the Chief Inspector of the Trade Inspection.

3. The President of the Office may order the Trade Inspection to proceed with the inspection or to exercise other tasks included in the scope of his activities.

4. The President shall perform periodical assessments of the activities of the Trade Inspection based on the reports submitted by this Inspection and shall address the conclusions of such assessments to the Chief Inspector of the Trade Inspection.

Article 31. The President of the Office may make public information concerning results of the control of The Trade Inspection as well as information about activities undertaken by virtue of the provisions of Article 26, items 11 and 12, excluding information constituting secrecy of the undertaking as well as of other secrecy protected under separate provisions.

Chapter 2

Territorial self-government and consumer organisations

Article 32. The tasks in the field of the protection of consumer interests in the scope determined by the Act and by separate provisions shall be performed also by the territorial self-government as well as by consumer organisations and other institutions, which statutory tasks include the protection of consumer interests.

Article 33. The task of the territorial self-government in the field of consumer protection shall consist in promoting consumer education, in particular by way of introducing elements of consumer awareness into educational programmes in the public schools.

Article 34. 1. The tasks of the district (powiat) self-government in the field of the protection of consumer rights shall be performed by the district (municipal) consumer advocate, hereinafter referred to as "Consumer Ombudsman".

2. The districts may, by way of an agreement, create one common post of the Consumer Ombudsman.

Article 35. 1. The Consumer Ombudsman shall be appointed by the district council or town council in towns with district status, hereinafter referred to as "the council".

2. The Consumer Ombudsman shall be appointed from among persons with university education, in particular in law or economy and with minimum five years of professional experience.

3. The Consumer Ombudsman shall be subordinated directly to the council and report to the council.

4. The organisational status of the Consumer Ombudsman shall be determined by the district statute or regulations.

Article 36. 1. The Consumer Ombudsman shall be employed in the district county (*starostwo*)

2. All functions in the scope of labour law in relation to the Consumer Ombudsman shall be performed by the governor of a county (*starosta*)

3. The working and payment conditions of the Consumer Ombudsman shall be determined by the council.

4. The rules on the remuneration of the consumer advocate shall be governed by the provisions on self-government employees.

Article 37. 1. The tasks of the Consumer Ombudsman shall, in particular include the following:

- 1) providing free of charge consumer advice and legal information in the scope of protection of consumer interests,
- 2) bringing forward motions for proclaiming and amending local regulations in the scope of consumer protection,
- 3) addressing entrepreneurs in cases pertaining protection of consumer rights and interests,
- 4) co-operation with the territorially competent branch office, with bodies of Trade Inspection and with consumer organisations,

5) performance of other tasks prescribed by the present Act and by separate provisions.

2. Consumer Ombudsman may in particular bring an action on consumers' behalf and, with their consent, join lawsuits in cases pertaining protection of consumer interests.

3. In the cases concerning misdemeanours to the detriment of consumers, the Consumer Ombudsman is acting as a public prosecutor in the meaning of provisions of the Misdemeanour Code.

4. The entrepreneur addressed by the Consumer Ombudsman acting pursuant to provisions of section 1, item 3, is under an obligation to provide the Ombudsman with requested explanations and information and to take stance in relation to comments and opinion of the advocate.

5. The provisions of Article 63 of the Code of Civil Proceedings shall apply, respectively, to the Consumer Ombudsman.

Article 38. 1. The Consumer Ombudsman shall submit to the council for approval annual activity report by 31 May of the following year.

2. The Consumer Ombudsman shall remit the report approved by the council referred to in section 1 to the territorially competent branch of the Office.

3. The Consumer Ombudsman shall be obligated to continually present to the branch offices the relevant conclusions and inform about problems concerning consumer protection which require taking measures on the government administration level.

Article 38a. 1. The National Council of Consumer Ombudsmen, hereinafter referred to as "the Council" shall be established as a body assisting the President of the Office.

2. The Council shall be a standing opinion-giving and advisory body of the President of the Office to the extent of matters relating to the protection of consumer rights at the level of powiat (district) self-government.

3. The tasks of the Council shall include, in particular:

- 1) submitting proposals on directions of legislative changes in provision pertaining to the protection of consumer rights;
- 2) giving opinion on matters of draft legal instruments or directions of the government's consumer policy;
- 3) giving opinion on such other matters falling within the scope of protection of consumers as the President of the Office may refer to the Council

4. The Council shall comprise nine Consumer Ombudsmen, one from each area of local competence of the branch offices of the Office for Protection of Competition and Consumers.

5. The members of the Council shall be appointed and dismissed by the President of the Office. Appointments shall be granted on motion of the directors of the branch offices referred to in paragraph 4, subject to a written consent of the recommended Consumer Ombudsmen. The recalling from the function of Consumer Ombudsman shall result in the expiry of membership of the Council.

6. The President of the Office may recall a member of the Council:

- 1) for a breach of duties arising from the membership of the Council;
- 2) for reasons of an illness that results in incapacity to discharge the duties of a member of the Council;
- 3) in the event of resignation.

7. The Office shall provide administrative support for the Council.

8. The Office shall refund to the members of the Council the costs of commuting to meetings of the Council in accordance with provisions on dues to which an employee is entitled in connection with domestic business travel.

9. The work practices of the Council shall be laid down in Rules and Regulations established by the President of the Office.

Article 39. 1. The consumer organisations shall represent consumer interests in relation to the public and self-government administration bodies and may participate in the implementation of the government consumer policy.

2. The organisations referred to in section 1 are, in particular, entitled to:

- 1) expressing opinion on the draft legal acts and other documents concerning rights and interests of consumers,
- 2) elaborating and disseminating consumer educational programmes,
- 3) performing tests of products and services and publishing their results,
- 4) editing periodicals, research studies, folders and leaflets,

- 5) providing free-of-charge consumer advisory services and assistance in handling consumer claims, unless the Statute of the organisation provides for pursuance of such activities against payment,
- 6) participating in works on standardisation,
- 7) implementing government tasks in the field of consumer protection, commissioned to them by the government and self-government administration bodies,
- 8) applying for allocation of public funds for the implementation of tasks referred to in item 7

Article 40. The government and self-government administration bodies shall be obliged to consult consumer organisations on the issues concerning the directions of activities aimed at the protection of consumer interests.

Article 41. The amount of yearly targeted budget allocation, in the meaning of the act of 26 November 1998 on public finance (J.L. of 2003 No 15, item 148, No 45, item 391, No 65, item 594), granted from the State budget for implementation of tasks referred to in Article 39, section 2, item 7 shall be determined in the Budgetary Act in the part of the State budget falling under disposal of the President of the Office.

Title V

Proceedings before the President of the Office

Chapter 1

General Provisions

Article 42. 1. The proceedings before the President of the Office shall be conducted as explanatory investigation, antimonopoly investigation or proceedings on matters of practices infringing collective consumer interests.

2. The explanatory investigation may precede instituting the antimonopoly investigation or proceedings on the matter of practices infringing collective consumer interests.

3. (repealed).

Article 43. 1. The President of the Office may institute, on an *ex officio* basis, and by way of a decision, explanatory proceedings, if the circumstances indicate a possibility that the provisions of the Act have been infringed, as to matters relative to a determined branch of economy, or as to matters regarding protection of consumer interests, and in any other cases as provided for by the Act.

2. The explanatory proceedings may in particular be aiming at:

- 1) initially determining whether an infringement of the provisions of this Act has occurred, such as may justify the institution of antimonopoly proceedings, including whether the case is of an antimonopoly nature,
- 2) initially determining whether an infringement of the provisions of this Act has occurred, such as may justify the institution of proceedings regarding the use of practices infringing the collective interests of consumers,
- 3) study of the market, inclusive of determination of the structure and degree of concentration thereof,
- 4) initially determining whether an obligation exists to notify an intended concentration,
- 5) determining whether an instance of infringement has occurred of any consumer interest being protected by the law, such as may justify the undertaking of actions determined in the relevant separate Acts or Laws.

3. The explanatory proceedings shall be concluded by way of a decision [*resp.* ruling].

4. Any explanatory proceedings should not last in excess of thirty (30) days, and as regards particularly complex issues, not longer than sixty (60) days of institution thereof.

5. In a case as referred to in clause 2, item 3, the provision of clause 4 and Article 35 of the Polish Code of Administrative Procedure shall not apply.

Article 44. 1. The antimonopoly investigation in the cases of competition restricting practices, control of concentrations, or matters of practices infringing collective consumer interests shall be instituted upon a motion or *ex officio*.

2. Proceedings regarding cases involving imposition of financial penalties determined in Title VI shall be instituted on an *ex officio* basis.

Article 45. 1. Entrepreneur or association of entrepreneurs shall be obligated to provide any and all necessary pieces of information and documents upon demand of the President of the Office.

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

- 1) indication of the scope of such information and the relevant time period,
- 2) indication of the object of the request,
- 3) time limit for providing information, instruction about sanctions for non-delivery information or for providing false or misleading information.

Article 45a. Everyone shall be entitled to submit, in a written form, on his or her own initiative or upon request of the President of the Office, explanations concerning the essential circumstances of a given case.

Article 46. 1. Only the original document or its copy certified by public administration body, notary, attorney at law, legal adviser or authorised employee of the entrepreneur may serve as the documentary evidence in the proceedings before the President of the Office.

2. The evidence in the proceedings before the President of the Office shall constitute the document drawn up in the Polish language, with the reservation of section 3.

3. Where such document has been drawn up in a foreign language also the translation into Polish of this document or of its part intended to serve as the evidence in the proceedings should be submitted, certified by a sworn translator.

Article 47. 1. The party adducing witness evidence is obligated to precisely indicate facts subject to confirmation by the testimony of individual witnesses and to indicate the data to allow proper summons of the witnesses.

2. The President of the Office, when summoning a witness, shall indicate in his summons name, surname and domicile of the summoned, place and date of giving the explanation, parties and subject of the case as well as provisions on penal sanctions for false testimony.

Article 48. 1. The testimony of a witness, after its entry to the protocol, shall be read before a witness and, depending on circumstances, completed or verified based on his/her comments.

2. The protocol of the hearings of a witness shall be signed by the witness and by the employee of the Office carrying on the hearings.

Article 49. 1. In cases requiring special information, the President of the Office having heard proposals of the parties concerning number of experts and their choice, may summon one or more experts in order to seek their opinion.

2. The expert in the meaning of section 1 may be also a legal person specialised in the relevant field.

Article 50. Until the termination of the activities of an expert each party may request him/her to be excluded from the proceedings for the same reasons as may be invoke to exclude the employee of the Office. The party lodging a request to exclude an expert after the works have been initiated has an obligation to give an appearance of verisimilitude that the reason justifying the exclusion arose thereafter or was unknown to the party beforehand.

Article 51. The President of the Office may order to present to an expert the case records and the subject of inspection. The provisions of Article 63, sections 1 and 3 shall apply respectively.

Article 52. 1. The opinion of an expert should contain its justification.

2. The experts may submit their joint opinion.

Article 53. 1. The President of the Office shall accord to an expert the remuneration in accordance with the provisions on costs of expert's evidence in court proceedings, with the reservation of section 3.

2. The President of the Office may impose upon a party the obligation to pay an advance on account of the expert's expenses.

3. Where the investigation is instituted *ex officio* and terminated by a decision referred to in Article 11, section 1, and in Article 23d, the costs of the expert's remuneration shall be born by the State Treasury.

Article 54. 1. The President of the Office may address a scientific or scientific-research institute to issue an opinion.

2. In its opinion this institute shall indicate person or persons who carried the research and issued the opinion.

3. The provisions of Articles 51 and 53, section 2 and 3 shall apply respectively.

Article 55. 1. During the proceedings the President of the Office may hold hearing.

2. The hearing referred to in section 1 shall be in open court, with the exception of such hearing or its part in course of which information subject to business secrecy or other secrecy protected by virtue of separate provisions are being examined.

3. The President of the Office may summon for the hearing and examine parties, witnesses as well as ask for expert opinion.

4. In the case of hearing in camera the provisions of Articles 153, 154 and 479¹⁰ of the Code of civil proceedings shall apply respectively.

Article 56. The President of the Office may address territorially competent regional court to examine witnesses and obtain an expert opinion, where it is supported by the character of the evidence or consideration of significant inconvenience or significant costs of obtaining the evidence. When addressing the court for providing evidence, the President of the Office shall issue a decision which shall define:

- 1) the court which is to provide evidence,
- 2) means of evidence,
- 3) facts to be established.

Article 57. 1. During the proceedings before the President of the Office the authorised employee of the Office or of the Trade Inspection, hereinafter referred to as "inspector", may perform the inspection of each entrepreneur or association thereof, hereinafter referred to as "controlled", in the scope encompassed by these proceedings.

1a. The President of the Office may authorise any of the following for participation in an inspection:

1) an employee of the competition authority of a Member State of the European Union – in a case referred to in Article 22 of Regulation 1/2003/EC, 2) any individuals having special knowledge – if for the sake of carrying out an inspection any such piece of knowledge is necessary.

2. Any authorisation for carrying out an inspection should comprise:

- 1) indication of the relevant legal basis,
- 2) date and location of issue,
- 3) first name, surname, and title/post of the inspector as well as the number of his or her professional identity card, and in case authorisation for participation in an inspection concerns any of individuals referred to in clause 1a – the respective first names and surnames of those persons, and:
 - a) the number of passport or any other document confirming the individual's identity – in case of individuals referred to in clause 1a, item 1; or,
 - b) the (personal) identity card number – in case of individuals referred to in clause 1a, item 2;
- 4) a marking of the entity to be inspected,
- 5) determination of the object and scope of inspection,
- 6) determination of the inspection start date and the expected end date,
- 7) signature of the authorisation granting individual, also quoting the title or post (scope of duties) being held by the same,
- 8) instruction regarding the rights and obligations of the entity being inspected.

3. The authorisation to perform the inspection referred to in section 1 is issued, respectively: by the President of the Office and, upon a motion of the Chief Inspector of the Trade Inspection, by the voivodship inspectors of the Trade Inspection.

4. The inspector shall be obligated to show to the person representing the entity being inspected the authorisation to carry out the inspection as well as his or her professional identity card, whereas individuals being authorised to take part in the inspection, as referred to in clause 1a, shall be obligated to show their (personal) identity card, passport, or any other document confirming their identity. In case a person authorised to represent the entity being inspected is not present, the authorisation to carry out the inspection as well as the professional ID, (personal) identity card, passport or another document confirming the identity shall be shown to an employee of the entity being inspected or to any other person being active at the place where the inspection is due to start. A copy of the authorisation for carrying out the inspection shall be left with the entity being inspected.

5. The inspector is entitled to:

- 1) enter the premises, buildings, rooms or other quarters and means of transportation belonging to the controlled,
- 2) request to render accessible files, books and all kinds of documents or data carriers related to the subject of inspection as well as duplicates and extracts thereof and also to make notes,
- 3) request persons referred to in Article 59, section 1, to provide oral explanations relevant for the subject of inspection.

5a. The person authorised to participate in the inspection, on the basis of section 1a of the present Article, enjoys the same rights as the inspector, concerning entering the premises, buildings, rooms and other quarters and means of transportation belonging to the controlled; having access to files, books and all kinds of documents or data carriers related to the subject of inspection, as well as duplicates and extracts thereof and also making notes; and is authorised to participate, alongside the inspector, in the in the inspection, referred to in Article 58 and 91 of the Act.

6. The Council of Ministers shall determine, by way of a regulation and taking into consideration objectives of the inspection, the detailed mode and procedure of the inspection, including mode of drafting inspection protocol.

Article 58. 1. In the course of the inspection the inspectors may also search the premises or things, pursuant to the permission of the Court for competition and consumer protection, issued upon a motion of President of the Office. During the search the inspector may be assisted by functionaries of other State control bodies or the Police from the unit territorially competent considering the entrepreneur's premises.

1a. In the event of any justifiable suspicion of a breach of the provisions of this Act, then in case of any urgent matter, particularly whenever obliteration or obscuring of evidence may occur, the President of the Office may propose a motion referred to in clause 1 prior to the antimonopoly proceedings getting instituted.

2. The Court for competition and consumer protection shall issue within 48 hours the decision in the case referred to in section 1. To the decision of the Court the right of complaint shall not apply.

3. The Police, upon instruction of the President of the Office, shall perform functions referred to in section 1.

4. With regard to any cases not regulated in the present Act, the relevant provisions of the Polish Code of Penal Proceedings shall apply accordingly.

Article 59. 1. The entity being inspected or the individual being authorised to represent the same, as well as the owner of a dwelling (living quarters), room, real estate, or means of transportation referred to in Article 91, clause 1, shall be obligated to:

- 1) provide any information that has been demanded,
- 2) render it feasible to enter the land and buildings, premises or any other rooms or areas and means of transportation,
- 3) render accessible the files, books or registers, and any other documents and/or other information carriers.

2. Individual referred to in clause 1 may refuse to provide information or co-operate in the course of an inspection exclusively whenever this would expose him or her, or his or her spouse, ascendants, descendants, siblings and/or relations in the same line or to the same degree, as well as any persons being related thereto by adoption, custody or *ad hoc* guardianship, or, a person being related thereto on

the basis of cohabitation, to criminal liability. The right to refuse provision of information or co-operate in the course of an inspection shall survive the cessation of marriage or dissolution of the relationship of adoption, custody or *ad hoc* guardianship.

Article 60. 1. In the course of an inspection referred to in Article 57, clause 1, the President of the Office may issue an order for seizure, in order to protect any files, books, documents of any type, or any other information carriers as well as any other objects that may constitute evidence in the case, for a period of time indispensable to carry out the inspection, being not longer, however, than seven (7) days.

2. The inspector shall summon the person being in a possession of the objects referred to in section 1 to deliver them voluntarily and, in the case of refusal, may carry their collection in the course of administrative execution proceedings.

3. The resolution on the seizure of objects shall be subject to complaint of the persons which rights have been infringed. The lodging of a complaint does not suspend enforcement of the decision.

Article 61. 1. The objects subject to seizure, delivered, collected or found during the inspection, after being examined and entered into the protocol of seizure, should be taken away or deposited with the trustworthy person, with the indication of the obligation to present them upon each request of the organ performing the inspection.

2. The protocol of seizure should contain indication of the case to which the seizure or search are related, exact hour of initiating and terminating the action, detailed list of detained objects and, where appropriate, their description and moreover, reference to the resolution of the President of the Office about a seizure. The protocol shall be signed by the executor and the representative of the controlled.

3. The executor of the seizure of the objects referred to in section 1 shall be obligated to immediately present to the interested persons the receipt specifying which objects and by whom have been detained and to inform without delay the entrepreneur whose objects have been detained.

4. The objects having been retained should be returned immediately after it has been found that they prove redundant in terms of the ongoing proceedings, or, following a revocation by the Court for Competition and Consumer Protection of a decision concerning retention of objects, no later than upon lapse of the final date referred to in Article 60, clause 1.

Article 61a. Without any separate proceedings being instituted, the President of the Office may carry out an inspection, inclusive of a search, under Article 58 or Article 91:

1) upon request from the European Commission – if the entrepreneur or individual authorised to represent the same, or, the owner of a dwelling (living quarters), room, real estate, or means of transportation referred to in Article 91, clause 1, has opposed the carrying out by the European Commission of an inspection in the course of proceedings conducted under the provisions of Regulation 1/2003/EC, or the Regulation 139/2004/EC,

2) upon request from the European Commission or a competition authority of any other Member State of the European Union – in a case referred to in Article 22 of Regulation 1/2003/EC, and in Article 12 of Regulation 39/2004/EC.

Article 62. 1. The President of the Office may, upon a motion/request or on an *ex officio* basis, and by way of a decision, limit to an extent indispensable the right to inspect into evidence being attached to the case file:

1) in case that rendering such evidence accessible would entail a risk that the enterprise's business secret, and/or any other secrets being liable to protection under the relevant separate provisions, may be revealed,

2) if so required by the public interest.

2. The restriction referred to in section 1 shall also apply to materials included to the investigation pursuant to Article 65, section 3.

3. The decision issued pursuant to section 1 shall be subject to complaint.

4. The party proposing a request concerning limited right of inspection into evidence shall also submit to the President of the Office a version of the document that does not comprise any pieces of information subject to a limitation referred to in clause 1, as furnished with a relevant annotation.

5. A version of the document not comprising any information being liable to a limitation referred to in clause 1 may be rendered available to the parties and entities concerned, as furnished with a relevant annotation.

Article 63. 1. The Office employees shall be obligated to protect the enterprise's business secret and/or any other secrets being liable to protection under the relevant separate provisions, of which they have become aware in the course of the proceedings.

2. The provision of clause 1 above shall not apply with information proving generally accessible, information regarding institution of proceedings, save for proceedings conducted in cases involving concentration with participation of public [i.e. publicly traded] companies, as understood to mean by the provisions on public trading in securities, as well as any information regarding issuance of decisions finalising the proceedings and their accompanying findings.

3. The provision of clauses 1 and 2 shall also apply with employees of the Trade Inspection and any other persons participating in a given inspection, as referred to in Article 57, clauses 1 and 1a.

Article 64. The public administration bodies are under obligation to render accessible to the President of the Office the files being in their possession as well as information relevant to the proceedings before the President of the Office.

Article 65. 1. Information received in the course of proceedings may not be taken advantage of in any other proceedings based on separate provisions, subject to clauses 2 and 3 below.

2. The provision of clause 1 shall not apply with:

- 1) penal proceedings exercised by a public-complaint procedure,
- 2) other proceedings exercised by the President of the Office, and,
- 3) sharing information with the European Commission and/or competition authorities of Member States of the European Union, under Regulation 1/2003/EC.

3. Any information received in the course of proceedings from a competition authority of a Member State of the European Union may be taken advantage of in the course of the said proceedings under the terms upon which those have been provided by that authority, inclusive of not availing oneself of the information in order to impose any sanctions upon certain persons.

4. The President of the Office shall notify the parties involved of having included in the pool of evidence the information obtained in the course of any other proceedings exercised by him.

Article 66. When issuing the decision terminating the proceedings, the President of the Office shall take into consideration only the charges to which parties could assume their position.

Article 67. 1. The President of the Office shall discontinue proceedings, by way of a decision, in the event that:

- 1) the motion/request concerning the ordering of cessation of practices restricting competition has been withdrawn,
- 2) the motion/request concerning the ordering of cessation of practices infringing collective interests of consumers has been withdrawn,
- 3) the notification on intended concentration of entrepreneurs has been withdrawn,
- 4) the applicant has remained idle, which renders it unfeasible to exercise proceedings regarding cases of practices restricting competition,
- 5) a financial penalty referred to in Article 101, clause 2, Article 102 and Article 103 has not been imposed,
- 6) the case has been taken over by the European Commission under the relevant provisions of the Community law.

2. The President of the Office may, by way of a decision, discontinue proceedings in case that the case concerned has been resolved by the competent competition authority of a Member State of the European Union.

Article 68. With the reservation of Articles 93 and 100g, the investigation shall not be instituted, where 5 years have elapsed since the end of the year when:

- 1) infringement of the provisions of the Act took place,

2) decision about imposition of fine became legally binding.

Article 69. 1. In the case of proceedings instituted upon a motion, the losing party shall be obligated to reimburse to the other party, upon its request, the expenses necessary for expedient legal redress and expedient defence, including costs of opinion of experts and scientific institutes.

2. The necessary expenses of the proceedings carried on by the party personally or by the plenipotentiary, who is not attorney at law or legal adviser, shall include travel costs incurred by the party or its plenipotentiary to visit the seat of the President of the Office.

3. The necessary expenses of the proceedings of the party represented by the attorney at law or legal adviser shall include his/her fees, however not higher than those resulting from payment rates determined by the separate provisions and expenses of one lawyer as well as costs of personal appearance of the party upon summons of the President of the Office.

Article 70. 1. Where the requests contained in a motion for instituting proceedings are only partially met, the expenses incurred by the parties shall be mutually compensated or proportionally shared. However, the President of the Office may impose upon one of the parties the obligation to reimburse all the expenses if the motion of the other party was not taken into account only in its insignificant part.

2. In the case of conciliation between the parties, the expenses of the proceedings shall cancel each other out, unless the parties decide otherwise.

Article 71. 1. The reimbursement of expenses shall be due to the entrepreneur or association thereof against which the proceedings are instituted upon a motion despite the assessment, by way of a decision, of infringement of the provisions of the Act, where such entrepreneur or association thereof give no grounds for the institution of the proceedings and admit, at the moment of the first action undertaken before the President of the Office after receiving information about instituting the investigation, the legitimacy of charges.

2. The costs of necessary opinions of experts and scientific institutes in the cases related to concentrations shall be born by the entrepreneurs participating in the concentration.

Article 72. Where proceedings are initiated *ex officio* and result in the assessment by the President of the Office of the infringement of provisions of the Act, entrepreneur or association thereof which perpetrate this infringement shall be obliged to bear the costs of the proceedings.

Article 73. In the cases particularly justified the President of the Office may impose upon the losing party the obligation to reimburse only a part of the expenses or desist from charging costs.

Article 74. Regardless of the result of proceedings, the President of the Office may impose upon a party the obligation to reimburse expenses due to its unreliable or clearly unfair behaviour, in particular costs resulting from avoidance to give explanation or submitting untruthful explanation, concealment or delayed presentation of the evidence.

Article 75. The President of the Office shall decide upon costs by way of a resolution, which may be included in the decision terminating the proceedings.

Article 76. The claim for reimbursement shall expire if in the time limit appointed by the President of the Office, not shorter than 7 days, the party does not submit a list of expenses or a request for reimbursement in conformity with separate provisions.

Article 77. 1. The motions for instituting antimonopoly proceedings before the President of the Office are subject to dues which are to be covered by entrepreneurs and associations thereof.

2. Where the motion is filed without dues being remitted, the President of the Office shall summon a mover to effect the payment within 7 days, with instruction that non - payment of dues will result in leaving the motion without being examined.

3. The antimonopoly proceedings may be instituted irrespective of the dues not being paid, where it is justified by important considerations concerning competition protection or consumer interests.

4. In the case referred to in section 3 the dues shall be subject to collection under provisions on administrative execution of payments.

5. In the case of the unquestionable incapacity of the entrepreneur, in particular being natural person, or of the association of entrepreneurs, to remit dues, the President of the Office may, upon their motion, relieve them from the dues, in part or in the entirety.

6. The Prime Minister determines, by way of a regulation, the amount of dues referred to in section 1 and mode of their payment, in particular the amount of rates, taking into consideration their division into motions concerning competition restricting practices and concentration as well as the mode of effecting payment of dues.

Article 78. 1. The decision of the President of the Office is subject to appeal to the Court for consumer and competition protection, lodged within two weeks from the date when the decision has been delivered.

2. The provisions of the Code of Civil Proceedings concerning proceedings in economic cases shall apply to the proceedings in cases of appeal against decisions of the President of the Office.

3. In the case where the appeal against decision is lodged, the President of the Office shall without delay remit it to the Court for competition and consumer protection together with case files.

4. Where the President of the Office considers the appeal to be justified, she/or he may – without remitting files to the court – abrogate or change decision in its entirety or in part, about which without delay is informed the party by sending a new decision, which may be appealed against.

5. Prior to the remittance of the appeal to the Court or the abrogation or the change of the decision pursuant to section 4, the President of the Office may also, in justified cases, perform additional activities aimed at clarification of objections contained in the appeal.

6. Provisions of sections 1-5 shall apply, respectively, to the resolutions of the President of the Office which are subject to complaints, however a complaint is to be lodged within one week as of the day of the remittance of the resolution.

Article 79. 1. Legal means for shaking decision foreseen in the Code of administrative proceedings and concerning resumption of proceedings, abrogation, change or assessment of invalidity of decisions shall not apply to the decision of the President of the Office.

2. The provision of clause 1 shall apply accordingly to the provisions of the President of the Office.

Article 80. To the matters not regulated by the present Act the provisions of the Code of administrative proceedings shall apply, with the reservation of Article 81.

Article 81. To the matters concerning the evidence in the proceeding before the President of the Office in the scope not regulated in the present chapter, Articles 227-315 of the Code of civil proceedings shall apply respectively.

Article 82. The entrepreneur shall inform the President of the Office about proceedings instituted against him abroad based on assumption of performance of competition restricting activities and shall remit to the President of the Office a copy of the judgement.

Article 83. The provisions of the present chapter shall apply respectively to the cases of imposition of fines for infringements of the provisions of the Act.

Chapter 2

Antimonopoly proceedings in cases of competition restricting practices

Article 84. 1. The motion for instituting the antimonopoly investigation related to suspicion of the infringement of the provisions of the Act may be lodged by:

- 1) entrepreneur or association of entrepreneurs, which prove their legal interest,
- 2) territorial self-government body,
- 3) organ of State inspection,
- 4) Consumer Ombudsman,

5) consumer organisation.

2. The motion referred to in section 1 shall be lodged in writing together with justification and indication of the legal basis with copies in a number enabling their presentation to the remaining parties to the proceedings. The mover is obliged to give to the infringement of the provisions of the Act the appearance of verisimilitude.

2a. In the event that the application appears not to meet the conditions determined in clause 2, the President of the Office shall call upon the applicant to complement the same within the date as fixed.

3. The President of the Office shall issue a provision concerning institution of antimonopoly proceedings and notify the parties concerned thereof.

Article 85. 1. The President of the Office may, by way of a decision, refuse to institute the antimonopoly proceedings if according to the information contained in a motion and being in a possession of the President of the Office clearly results that the prohibition provided for in Article 5 has not been infringed in the scope not exempted pursuant to Articles 6 and 7, or prohibition defined in Article 8.

2. Prior to issuing the decision on instituting or refusing to institute the antimonopoly proceedings, the President of the Office may proceed with the explanatory investigation referred to in Article 43 aimed at obtaining additional information necessary to decide upon instituting or refusing to institute the antimonopoly proceedings.

3. President of the Office shall refuse, by way of a decision which is subject to a complaint, to institute antimonopoly proceedings where the motion is lodged by a person not authorised in conformity with Article 84 section 1.

4. The President of the Office may refuse to institute antimonopoly proceedings, by way of a decision [*resp.* ruling] being subject to complaint, in the event that the applicant has not complemented the application within the date as fixed.

Art. 85a. 1. The President of the Office shall, in accordance with Article 11, clause 6 of Regulation 1/2003/EC, refuse, by way of decision [*resp.* ruling] to institute antimonopoly proceedings in the event that:

- 1) the European Commission is exercising proceedings regarding this same case,
- 2) the case has been resolved by the European Commission.

2. The President of the Office may, pursuant to Article 13 of Regulation 1/2003/EC, refuse, by way of a decision [*resp.* ruling], to institute antimonopoly proceedings in the event that:

- 1) the competent competition authority of another Member State of the European Union is exercising proceedings regarding this same case,
- 2) the case has been resolved by the competent competition authority of another Member State of the European Union.

3. If in a case referred to in clause 2, item 1, the President of the Office has instituted antimonopoly proceedings concerning the given case, he may suspend the proceedings, by way of a decision [*resp.* ruling].

Article 86. The party to the investigation shall be a person who applies for the issuance of a decision in the matters concerning competition restricting practices or against whom the proceedings on application of competition restricting practices or infringement of other provisions of the Act are instituted.

Article 87. 1. The President of the Office may admit any of the following to participating in proceedings, in capacity of interested/concerned entity:

- 1) entrepreneur who has rendered it plausible that he has been injured or wronged resulting from actions constituting infringement of the provisions of this Act,
- 2) a party to the agreement/contract being concerned by the proceedings,
- 3) any other entity that has proposed a motion/request and proved its legal interest, or whose admission to participating in the proceedings may contribute to clarification of the case being considered.

2. Admission or refusal to admit to participating in proceedings, in capacity of interested/concerned entity, shall be effectuated by way of a decision [*resp.* ruling] being subject to complaint.

3. The entity interested/concerned may propose documents and make statements regarding the circumstances of the case.

4. The entity interested/concerned has the right to inspect the files, to the extent as necessary in view of protecting his rights, and providing that this will not infringe the enterprise's business secret, or any other secrets being liable to protection under the relevant separate provisions.

5. The President of the Office shall inform the entity interested/concerned of the manner in which the affair has been settled. Such an entity shall not be entitled to lodge an appeal or complaint whatsoever.

6. The President of the Office shall notify the party of that it has been admitted to partaking in the proceedings of the entity interested/concerned.

Article 88. 1. If, in the course of antimonopoly proceedings, it has been rendered plausible that any further use of the practice being objected against may cause serious and hard-to-remove threats to competition, the President of the Office may, prior to the conclusion of the antimonopoly proceedings, and by way of a decision, charge the entrepreneur or association of entrepreneurs being charged with use of the practice, with an obligation to omit acting in a certain manner, in order to prevent those threats. Lodging 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 itself as to the evidence and materials gathered, or demands submitted, as referred to in Article 10 of the Polish Code of Administrative Procedure.

2. In the decision referred to in clause 1, the President of the Office shall determine the time for which it is due to be binding. The decision shall be binding for no longer than until a decision is issued concluding the proceedings regarding the case.

3. The President of the Office may prolongate, by means of a decision, the time of validity of a decision referred to in clause 2. The provision of clause 2, second sentence, shall apply accordingly.

4. In the event that a decision is issued, as referred to in clause 1, Article 101, clause 1, items 1 and 2 shall not apply.

Article 89. (repealed).

Article 90. The President of the Office may issue a decision or a part of it under pain of immediate enforcement, where it is necessary for the protection of competition or important interest of consumers.

Article 91. 1. In the event that any justifiable grounds for presuming that in a dwelling (living quarters) or in any other room, real estate or means of transportation, any objects, files, books/registers, documents and/or any other information carriers are kept which may influence the determination of the actual state of affairs being of essence for the proceedings being exercised, the Court for Competition and Consumer Protection may, upon motion/request of the President of the Office, grant its consent for carrying out a search, including for seizure of objects that may constitute evidence for the case, by officers of the Police based in the unit being competent with regard to the location of that dwelling, room or real estate, or, the place of (temporary) residence of the owner of the means of transportation.

1a. In case that there has occurred a justifiable suspicion of a significant breach of the provisions of this Act, then in case of any urgent matter, particularly whenever obliteration or obscuring of evidence might be caused, the President of the Office may propose a motion referred to in clause 1 prior to the antimonopoly proceedings getting instituted.

2. The search referred to in section 1 shall be performed also with the participation of the inspector. Provision of Article 57, sections 2 and 3 shall apply respectively.

3. The Court for competition and consumer protection shall give permission referred to in section 1 by way of a resolution which is not subject of appeal.

4. On the basis of the order of the Court for competition and consumer protection, the Police shall perform the activities referred to in section 1.

Article 92. The antimonopoly proceeding in cases of competition restricting practices shall be completed no later than 5 months as of the date of their institution. Provisions of Articles 35 to 38 of the Polish Code of Administrative Procedure shall apply accordingly.

Article 93. The proceedings in the matters of application of competition restricting practices shall not be instituted where since the end of the year in which they have been abandoned one year have elapsed.

Chapter 3

Proceedings in the cases of concentration

Article 94. 1. Every person who notifies, in conformity with section 2, the intention of concentration shall be a party to the proceedings.

2. The intention of concentration shall be notified by:

- 1) merging entrepreneurs jointly - in the case referred to in Article 12, section 2, item 1,
- 2) entrepreneur taking over the control - in the case referred to in Article 12, section 2, item 2,
- 3) jointly all entrepreneurs participating in creation of a joint entrepreneur - in the case referred to in Article 12, section 2, item 3,
- 4) entrepreneur taking over or acquiring stocks or shares - in the case referred to in Article 12, section 3, item 1,
- 5) entrepreneur in whose managing or controlling body the person already performing function of the member of managing or controlling body of another entrepreneur is assuming the function - in the case referred to in Article 12, section 3, item 2,
- 6) respectively financial institution or entrepreneur who acquired stocks or shares in order to secure liabilities - in the case in Article 12, section 3, item 3.

3. In the case where a concentration is performed by a dominant entrepreneur by intermediary of at least two dependent entrepreneurs, the notification of intention of concentration shall be filed by a dominant entrepreneur.

4. (repealed).

5. The Council of Ministers shall determine, by way of a regulation, the detailed conditions to be met by the notification of intention of concentration, including list of information and documents which this notification should contain, taking into consideration the specificity of activities conducted by different entrepreneurs and, in particular by financial institutions.

Article 95. 1. The President of the Office may, by way of a decision [*resp.* ruling], admit any of the following to participating in proceedings, in capacity of interested/concerned entity:

- 1) entrepreneur over whom another entrepreneur is taking control,
- 2) entity ceding its shares or interests,
- 3) entity transferring its assets/property,
- 4) a competitor to the entrepreneur being involved in a concentration,
- 5) any other entity that has put forward a relevant motion and proved its relevant legal interest.

2. Entities interested/concerned may make statements and propose documents being of import for resolution of the case.

3. The provision of Article 87, clause 5 shall apply accordingly.

Article 96. 1. The President of the Office may:

- 1) return within 14 days the notification of the intention of concentration shall it fail to meet the requirements with which it should comply,
- 2) summon the party notifying the intention of concentration to eliminate the indicated errors in the notification or to supplement necessary information, in the appointed time limit.

2. The President of the Office may present to the entrepreneur or association of entrepreneurs participating in the concentration the requirements referred to in Article 18, section 2, appointing the time limit for adopting attitude towards the proposal; the failure to reply or negative answer shall result in the issuance of the decision referred to in Article 19, section 1.

Article 97. 1. The antimonopoly proceedings in concentration cases should be terminated not later than within 2 months since their institution.

2. In the event that the entrepreneur has presented the terms and conditions determined in Article 18, clause 2, the (final) date referred to in clause 1 shall be extended by additional fourteen (14) days.

3. The time limits as established in clauses 1 and 2, do not include the time period of waiting for notification from other participants of the concentration, and the time periods necessary to complete information, as referred to in Article 96, clause 1, item 2, or to respond to the measures proposed by the President of the Office, referred to in Article 18, clause 2, as well as the time period of waiting until the fee is paid, as referred to in Article 77, clause 2.

Article 98. 1. The entrepreneurs which intention of concentration is subject to notification are under obligation to refrain from proceeding with concentration until the issuance of the decision of the President of the Office or the lapse of the time limit in which such a decision should be issued.

2. The legal action pursuant to which the concentration is to be effected may be performed under condition of the issuance by the President of the Office, by way of a decision, of the approval or after the lapse of the time limit referred to in Article 97.

3. The realisation of the public offer to purchase or exchange of stocks, notified to the President of the Office under procedure stipulated in Article 12, section 1, shall not be considered as an infringement of the obligation referred to in section 1, provided the buyer does not exercise the voting rights arising from the acquired stocks or exercises them solely in order to maintain full value of his capital investment or to prevent the substantial damage which might affect the entrepreneurs participating in the concentration.

Article 99. In the case where the President of the Office shall conceive the information about the concentration being effected with the infringement of the obligation referred to in Article 12, he may institute the investigation *ex officio*.

Article 100. In the case of non-compliance with the decision referred to in Article 20, section 1 or 4, the President of the Office may, by way of a decision, accomplish a separation of the entrepreneur. To the separation of a company the provisions of Articles 528-550 of the act of 15 September 2000 – Code of commercial companies (J.L. of 2000, No 94, item 1037, and of 2001, No 102, item 1117, and of 2003, No 49, item 408) shall apply respectively. The President of the Office has the competence of the bodies of companies participating in the separation. Moreover, the President of the Office may apply to the court for the annulment of the agreement or for undertaking other legal means aimed at restoring the previous status.

Chapter 4

Proceeding on matters of practices infringing collective consumer interests

Article 100a. 1. An application for the institution of proceedings on the matter of a practice infringing collective consumer interests may be filed by:

- 1) Civil Rights Ombudsman,
- 2) Insurance Ombudsman,
- 3) Consumer Ombudsman,
- 4) consumer organisation.

2. The application for the referred to in paragraph 1 may also be filed by a foreign organisation entered in the list, published in the Official Journal of the European Communities, of organisations entitled in the European Union Member States to file an application for the institution of proceedings, where the object of its activity warrants its filing an application for the institution of proceedings on the matter of an infringement resulting from unlawful failure or such acts performed in Poland, which jeopardise collective consumer interests in the Member State where the organisation is seated.

3. The provisions of Article 84, clauses 2 to 3 shall apply accordingly.

Article 100b. 1. The President of the Office may, by decision, refuse to institute proceedings where it is evident from information contained in the application and that in the possession of the President of the Office that no infringement of collective consumer interests has occurred. The provision of Article 85, paragraph 2 shall apply respectively.

2. The President of the Office shall, by ruling, refuse to institute proceedings where the application has been filed by a person not authorised under Article 100a, paragraph 1 or 2.

3. The President of the Office may, by ruling, refuse to institute proceedings:

- 1) where the applicant has failed to furnish within the fixed time limit information necessary for determining whether or not the proceedings will be instituted,
- 2) where the application does not meet the requirements referred to in Article 84, paragraph 2.

4. The applicant shall have the remedy of appeal by complaint from the rulings referred to in paragraphs 2 and 3.

Article 100c. Anyone who requests the issuance of a decision on the matter of a practice infringing collective consumer interests or against whom proceedings for the employment of such a practice has been instituted shall be a party to the proceedings.

Article 100d. A settlement may be made in proceedings before the President of the Office where the nature of the matter warrants this and the settlement is not intended to circumvent the law or is not contrary to public interest or a legitimate consumer interest.

Article 100e. The President of the Office, may rule that the decision be immediately enforceable in whole or in part where an important consumer interest so warrants.

Article 100f. Proceedings on the matter of a practice infringing collective consumer interests shall be concluded no later than two months, and in particularly complicated matters no later than three months from the date of institution. Provisions of Articles 35 to 38 of the Code of Administrative Procedure shall apply respectively.

Article 100g. No proceedings on the matter of practices infringing collective consumer interests shall be instituted where a year has elapsed from the end of the year in which such practices were discontinued.

Article 100h. No fees shall be administered for proceedings on the matter of practices infringing collective consumer interests.

Title VI

Fines

Article 101. 1. The President of the Office may impose upon the entrepreneur, by way of a decision, a financial penalty being not in excess of ten per cent (10%) of the revenue earned in the accounting year preceding the year within which the penalty is imposed, if the entrepreneur, even if unintentionally:

- 1) has committed infringement or breach of the ban determined in Article 5, as regards the non-excluded scope under Articles 6 and 7, or infringement/breach of the ban determined in Article 8,
- 2) has committed infringement of Article 81 or Article 82 of the EC Treaty,
- 3) has effected a concentration without a consent from the President of the Office.

2. The President of the Office may also impose upon the entrepreneur, by way of a decision, a financial penalty being an equivalent of from 1,000 to 50,000,000 Euros, if the entrepreneur, even if unintentionally:

- 1) in an application referred to in Article 22, or in a notification referred to in Article 94, clause 2, has quoted any untrue data or specifics,
- 2) has not provided information as demanded by the President of the Office pursuant to Article 11a, clause 3, Article 18, clause 3, or Article 45, or, provided untrue or misleading information,
- 3) has not collaborated in the course of inspection being carried out within the framework of proceedings under Article 57, subject to Article 59, clause 2,
- 4) has not fulfilled his obligation provided for in Article 82.

3. In case whereby the entrepreneur has been established by way of transformation or concentration of other entrepreneurs, when calculating the turnover, as referred to in clause 1, the whole revenue earned by all the entrepreneurs in the accounting year preceding the year within which the penalty is imposed, shall be considered.

4. In case whereby an entrepreneur has not gained any revenue in the accounting year preceding the year within which the penalty, the President of the Office may impose a financial penalty being an equivalent of up to one hundred-fold the average salary.

5. The provisions set in clauses 1 to 4 shall apply to the associations of entrepreneurs accordingly.

Article 102. 1. The President of the Office may impose on entrepreneurs, by way of a decision, a financial penalty being an equivalent of from five-hundred (500) to ten-thousand (10,000) Euros per each

day of delay in execution of decisions issued under Article 9, Article 11a, clause 1, Article 18, clause 1, Article 19, clause 1, and, Article 20, clauses 2 and 4, Article 23c, as well as Article 88, clauses 1 and 3, decisions [*resp.* rulings] issued under Article 60, clause 1, or court judgements rendered in cases involving practices restricting competition, practices infringing collective interests of consumers, and concentration; the financial penalty shall be imposed as from the date as indicated in the respective decision.

2. The provisions of section 1 shall apply to the associations of entrepreneurs. Where the association of entrepreneurs does not attain any income, the fine for each commenced month of non execution of the decision, resolution or of the court judgement within the time limit shall be fixed by the President of the Office in the amount up to fifty-fold of the average salary.

Article 103. 1. The President of the Office may, by way of a decision, impose on a person holding managerial posts or being a member of a managing authority of the entrepreneur or association of entrepreneurs, a financial penalty of up to fifty-fold the average salary, should such a person, intentionally or not, have not:

- 1) executed any of the decisions, rulings or judgements referred to in Article 102,
- 2) reported an intention to concentrate referred to in Article 12,
- 3) provided information, or have provided unreliable or misleading information, as demanded by the President of the Office pursuant to Article 45.

2. The President of the Office may impose upon the persons referred to in Article 59, section 1, the fine referred to in section 1, for non providing the information or providing false or misleading information, requested by the President of the Office pursuant to Article 45, with the reservation of Article 59, section 2, and also for the lack of co-operation in the inspection carried within the frameworks of the investigation pursuant to Article 57, with the reservation of Article 59, section 2, as well as upon the witnesses for unjustified refusal to testify.

Article 103a. 1. Subject to clause 4 below, the President of the Office shall refrain from imposing a penalty referred to in Article 101, clause 1, item 1 or 2, upon an entrepreneur taking part in an agreement referred to in Article 5, clause 1 or Article 81 of the EC Treaty, should this entrepreneur have jointly fulfilled the following conditions:

- 1) he has been the first, amongst the participants of the agreement, to:
 - a) provide the President of the Office with information concerning the existence of such a forbidden agreement, as may suffice for instituting antimonopoly proceedings, or,
 - b) present to the President of the Office, upon his own initiative, a proof rendering it possible to issue a decision referred to in Article 9 or 10,
- providing that the President of the Office did not have at that time any information or pieces of evidence proving sufficient for instituting antimonopoly proceedings or issuing a decision referred to in Article 9 or 10;
- 2) he is fully co-operating with the President of the Office in the course of the proceedings, providing him with any and all proofs or pieces of evidence that he may have at his disposal, or the ones he may have at his disposal, and promptly giving any and all pieces of information relating to the case, upon his own initiative or upon demand of the President of the Office,
- 3) he has ceased participating in the agreement not later than as of the day in which he notified the President of the existence of an agreement or presented evidence referred to in item 1, subparagraph b),
- 4) he was not the initiator of the agreement, and has not induced any other entrepreneurs to partaking in the agreement.

2. In the event that an entrepreneur partaking in an agreement referred to in Article 5, clause 1 or in Article 81 of the EC Treaty, appears not to be meeting the conditions referred to in clause 1, then the President of the Office shall decrease the penalty referred to in Article 101, clause 1, item 1 or 2, being imposed on that entrepreneur, should the latter have jointly fulfilled the following conditions:

- 1) he has presented to the President of the Office, upon his own initiative, a proof which to an essential extent will contribute to issuing a decision referred to in Article 9 or 10,
- 2) he has ceased participating in the agreement by the moment he presented the evidence (proof) referred to in item 1 above, at the latest.

3. In a case referred to in clause 2, the President of the Office shall impose a penalty, subject to Article 103b:

- 1) being not in excess of five per cent (5%) of the revenue earned in the accounting year preceding the year within which the penalty is imposed – if upon the entrepreneur who has first met the conditions, referred to in clause 2,
 - 2) being not in excess of seven per cent (7%) of the revenue earned in the accounting year preceding the year within which the penalty is imposed – if upon the entrepreneur proving to be the second to have met the conditions, referred to in clause 2,
 - 3) being not in excess of eight per cent (8%) of the revenue earned in the accounting year preceding the year within which the penalty is imposed – if upon the other entrepreneurs who have met the conditions, referred to in clause 2.
4. In case that an entrepreneur has fulfilled the conditions determined in clause 1, item 1, sub-paragraph b), and items 2 to 4, the President of the Office shall impose a penalty at the amount as determined in clause 3, item 1, provided that another entrepreneur partaking in the agreement had prior thereto met the conditions determined in clause 1, item 1, sub-paragraph a) and items 2 to 4.
5. The Council of Ministers shall determine, by way of an ordinance, the procedure to be followed in case that entrepreneurs have applied for renouncement or reduction of penalty, including in particular:
- 1) the method of receiving/accepting and considering entrepreneurs' requests for renouncement or reduction of penalty, and,
 - 2) the method of notifying the applying entrepreneurs of the position assumed by the President of the Office,
- having regard to a necessity for ensuring the option for producing a reliable assessment of whether the entrepreneurs have fulfilled the conditions referred to in clauses 1 and 2, and for classifying the requests appropriately.

Article 103b. 1. In case whereby an entrepreneur has been established by way of transformation or concentration of other entrepreneurs, when calculating the turnover, as referred to in Article 103a, clause 3, the whole revenue earned by all the entrepreneurs in the accounting year preceding the year within which the penalty is imposed, shall be considered.

2. In case whereby an entrepreneur has not gained any revenue in the accounting year preceding the year within which the penalty, the President of the Office may impose a financial penalty being an equivalent of:

- 1) fifty-fold the average salary, imposed on the entrepreneur who has first met the conditions, referred to in Article 103a, clause 2,
- 2) seventy-fold the average salary, imposed on the entrepreneur who has second met the conditions, referred to in Article 103a, clause 2,
- 3) eighty-fold the average salary, imposed on the other entrepreneur who have met the conditions, referred to in Article 103a, clause 2.

Article 104. When fixing the amount of the fines referred to in Articles 101-103 the duration, gravity and circumstances of the previous infringement of the provisions of the Act should be particularly taken into account.

Article 105. 1. The fines referred to in Articles 101-103 are to be paid out of the income after taxation or out of another form of the surplus of revenues over expenses decreased by the taxes.

2. The execution of the fine imposed by the President of the Office shall be suspended until validation of the decision about its imposition.

3. Financial means originating from the fines referred to in Articles 101-103 shall constitute income of the State Treasury.

4. The fine is to be paid within 14 days from the validation of the decision of the President of the Office.

5. In the case of the ineffective lapse of the time limit referred to in section 4, the fine shall be subject to collection on the bases of the provisions on administrative execution proceedings.

6. In the case of delay in the payment of a fine the interest shall not be collected.

Article 106. 1. Upon a motion of the entrepreneur, association of entrepreneurs or persons referred to in Article 103, the President of the Office may, by way of a resolution which is not subject to appeal,

accord to the respite for payment of the fine or to the payment on the instalment plan, taking into account important interests of the mover.

2. The President of the Office may abrogate, by way of a resolution which is not subject to appeal, the respite for payment of the fine, where new or previously unknown circumstances, substantial for the settlement, are disclosed.

Title VI a

Penal provision

Article 106a. 1. Whoever, acting against the provision of Article 37, clause 4, has breached the obligation of furnishing the Consumers Advocate with explanations and information being the subject of the Advocate's approach, or the obligation to take a stance on the Spokesman's comments and/or opinions, shall be liable to a penalty of fine.

2. Deciding and adjudging as regards cases involving acts determined in clause 1 above shall be effectuated by procedure of the Polish Code of Proceedings in Minor Offence Cases

Title VII

Amendments to the existing provisions

Article 107. The following amendments shall be introduced into the act of 17 November 1964 – the Code of civil proceedings (L.J. of 1964, No 43, item 296, of 1965, No 15, item 113, of 1974 No 27, item 157 and No 39, item 231, of 1975, No 45, item 234, of 1982 No 11, item 82 and No 30, item 210, of 1983 No 5, item 33, of 1984 No 45, item 241 and 242, of 1985 No 20, item 86, of 1987 No 21, item 123, of 1988 No 41, item 324, of 1989 No 4, item 21 and No 33, item 175, of 1990 No 14, item 88, No 34, item 198, No 53, item 306, No 55, item 318 and No 79, item 464, of 1991 No 7, item 24, No 22, item 92, No 115, item 496, of 1993 No 12, item 53, of 1994 No 105, item 509, of 1995 No 83, item 417, of 1996 No 24, item 110, No 43, item 189, No 73, item 350 and No 149, item 703, of 1997 No 43, item 270, No 54, item 348, No 75, item 471, No 102, item 643, No 117, item 752, No 121, item 769 and 770, No 133, item 882, No 139, item 934, No 140, item 940 and No 141, item 944, of 1998 No 106, item 668 and No 117, item 757, of 1999 No 52, item 532 and of 2000 No 22, item 269 and 271, No 48, item 552 and 554, No 55, item 665, No 73, item 852 and No 94, item 1037, No 114, item 1191 and 1193 and No 122, item 1314) the following amendments are introduced: (amendments omitted).

Article 108. Article 20 of the act of 20 June 1985 – Law on organisation of common courts (J.L. of 1994, No 7, item 25, No 77, item 355, No 91, item 421, No 105, item 509, of 1995 No 34, item 163, No 81, item 406, of 1996 No 77, item 367, of 1997 No 75, item 471, No 98, item 604, No 106, item 679, No 117, item 751, 752 and 753, No 121, item 769, No 124, item 782, No 133, item 882, of 1998 No 98, item 607, No 160, item 1064, No 162, item 1118 and 1125, of 1999 No 20, item 180, No 60, item 636, No 75, item 853, No 83, item 931, No 110, item 1255 and of 2000 No 48, item 551, No 50, item 580, No 56, item 678, No 114, item 1193, No 120, item 1268 and No 122, item 1314) - shall read as follows: (amendments omitted).

Article 109. In the act of 30 April 1993 on national investment funds and their privatisation (J.L. of 1993 No 44 item 202, of 1994 No 84 item 385, of 1997 No 30 item 164, No 47 item 298 and No 107 item 691) the following amendments shall be introduced (amendments omitted).

Title VIII

Transitional and final provisions

Article 110. 1. As of the day the present Act is coming into force the first term of office of the President of the Office holding this post on that day shall begin, without prejudice to sections 2 and 3.

2. The term of office referred to in section 1 shall be abbreviated by the period for which the President of the Office has been holding this post before the Act becomes effective.

3. The Prime Minister may recall the President of the Office within 3 months as of the day the Act comes into force. During this period the restrictions referred to in Article 24, section 5 shall not apply.

Article 111. As of the day the present Act comes into force, Directors and Deputy Directors of the Office branches shall become members of the civil service corps and their hitherto work relations established by way of the appointment based on rules defined in the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interests (J.L. of 1999 No 52, item 547 and of 2000 No 31, item 381, No 60, item 704) shall be transformed into work relations by virtue of the work contract for unlimited duration, only that the post of Vice-Director of the delegation shall change to the post of Deputy Director.

Article 112. When fixing the amount of the fine referred to in Article 104 also the fact of the infringement of the provisions of the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interest shall be taken into account within the period of 5 years as of the day the present Act enters into force.

Article 113. The investigations instituted by virtue of the provisions of the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interest shall be carried pursuant to the provisions of the present Act.

Article 114. The implementing regulations issued on the bases of the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interests shall remain in force until the time they will be superseded by the regulations issued pursuant to the present Act, in the scope in which they are not contradictory to its provisions, but not longer than for the period of 12 months from its entering into force.

Article 115. The value of EURO referred to in the provisions of the Act shall be converted into Polish Zloty, according to average rate of foreign currencies published by the National Bank of Poland on the last day of the year preceding the year in which the intention of concentration is notified or fine imposed.

Article 116. Wherever in the separate provisions the antimonopoly authority or the Antimonopoly Office are being mentioned, it should be understood as the President of the Office for Competition and Consumer Protection.

Article 117. The act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interests expires (J.L. of 1999 No 52 item 547 and of 2000 No 31 item 381, No 60 item 704).

Article 118. The present act enters into force on 1 April 2001, with exception to provisions of article 41, which become binding as of 1 January 2001.