

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

POLISH OFFICE OF COMPETITION AND CONSUMER PROTECTION

March 15th, 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]

Statutory Laws

A. Notification provisions

- The Act on Competition and Consumer Protection of 16 February 2007 (Journal of Laws of 2021, item 275), “**Competition Act**”,
- Regulation of the Council of Ministers of 23 December 2014 on the notification of intended concentrations of undertakings (Journal of Laws of 2018, item 367), “**Notification Regulation**”,
- Regulation of the Council of Ministers of 23 December 2014 on the method of calculating the turnover of undertakings participating in a concentration (Journal of Laws of 2015, item 79), “**Turnover Regulation**”.

Available at:

https://www.uokik.gov.pl/ochrona_konkurencji_.php (in Polish),

https://www.uokik.gov.pl/competition_protection.php (in English).

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

<p>B. Substantive merger review Provisions</p>	<p>Section III (Concentrations):</p> <ul style="list-style-type: none"> • Chapter I (Concentration Control), art. 13-17 • Chapter II (Decisions in Concentration Cases), art. 18-23 <p>Section VI (Proceedings before the President of the Office):</p> <ul style="list-style-type: none"> • Chapter I (General Provisions), art. 47-85 • Chapter III (Antitrust Proceedings Concerning Concentrations), art. 94-99 <p>Section VII (Fines):</p> <ul style="list-style-type: none"> • Chapter I (Imposing Fines), art. 106-113 of the Competition Act. <p>Available at: see point 1A</p>
<p>C. Implementing regulations</p>	<ul style="list-style-type: none"> • Notification Regulation, • Turnover Regulation. <p>Available at: see point 1A</p>
<p>D. Notification forms or information requirements</p>	<ul style="list-style-type: none"> • Notification Regulation <ul style="list-style-type: none"> - describes in detail the requirements of a concentration notification, - includes an attached list of information and documents required in a notification. <p>Available at: see point 1A</p>
<p>Interpretative Guidelines and Notices</p>	
<p>E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]</p>	<ul style="list-style-type: none"> • Guidelines on the criteria and procedure for notifying intended concentrations, • Diagram – explaining the method of counting the turnover of capital groups, • Notification Regulation, • Turnover Regulation. <p>Available at: see point 1A and</p>

	https://www.uokik.gov.pl/wyjasnienia_i_wytyczne.php (in Polish), https://www.uokik.gov.pl/merger_control.php (in English).
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	<ul style="list-style-type: none"> Clarifications on the assessment of notified concentrations. Available at: see point 1E
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No, it has not published guidelines or directives on notification of concentrations involving specific sectors.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	The website of the Office of Competition and Consumer Protection (“ The Office ”) contains information regarding frequent mistakes made in concentration notifications, interpretation of certain provisions of the Competition Act, and most frequently asked questions regarding concentrations. Available at: https://www.uokik.gov.pl/koncentracje_bledy_we_wnioskach.php https://www.uokik.gov.pl/interpretacja_przepisow.php https://www.uokik.gov.pl/faq_kontrola_koncentracji.php (all in Polish).

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	The President of the Office of Competition and Consumer Protection (“ The President of the Office ”) is the central government administration authority competent in the field of competition and consumer protection, including concentration control.
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Office of Competition and Consumer Protection Plac Powstańców Warszawy 1 00-950 Warsaw, Poland ph.: (+48 22) 556 08 00 website: www.uokik.gov.pl (in Polish), www.uokik.gov.pl/home.php (in English)

	e-mail: uokik@uokik.gov.pl
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	<p>Pre-notification consultation is carried out on an informal basis.</p> <p>The Department of Concentration Control, ph.: (+48 22) 55 60 122 fax: (+48 22) 82 69 106 dkk@uokik.gov.pl</p>

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	<p>The Competition Act does not include a legal definition of a concentration. However, it indicates situations (known as concentrations) that are subject to notification to the President of the Office.</p> <p>The obligation to notify refers to:</p> <ol style="list-style-type: none"> 1) a merger of two or more independent undertakings, 2) acquiring direct or indirect control over one or more undertakings by one or more undertakings – by way of acquisition or entering into possession of stocks, other securities, shares, or in any other way, 3) creation by undertakings of a joint undertaking, 4) acquisition by an undertaking, of assets of another undertaking (the entirety or part of the undertaking). <p>This catalog is closed. This means that only the above-mentioned situations are notifiable. Therefore, as an example, there is no obligation to notify:</p> <ul style="list-style-type: none"> - so-called <i>quasi</i> concentrations, consisting in the acquisition or taking up of shares or stocks, which however do not lead to acquisition of control, - so-called personal concentrations, where a person who already is a member of the management or control body in one undertaking, begins performing such functions in another undertaking - as long as such action does not lead to the acquisition of control.

Ad 1 Merger of two or more independent undertakings

Mergers of independent undertakings take place usually as a result of two situations specified in the Polish Commercial Companies Code, namely:

- incorporation - when all assets of the target company are transferred to the acquiring company in exchange for shares or stocks given by the acquiring company to the shareholders of the target company or
- merger - when a new capital company is established and assets of all merging companies are transferred in exchange for shares or stocks of the new company, whereby the target company or merging companies are dissolved.

- in practice, those mergers frequently involve mergers of cooperatives,
- mergers may also occur despite the lack of merging in the legal sense, i.e. without a decrease of the number of undertakings as a result of the merging operations. To establish that the merger took place there should be permanent, joint economic management after the merger,
- obligation to notify a merger applies only to mergers of independent undertakings, i.e. not belonging to the same capital group within the meaning of the Competition Act.

Ad 2 Acquisition of control

- Most frequently notified concentration,
- understood as any form of direct or indirect acquisition by an undertaking of powers which, individually or jointly, considering all legal or factual circumstances, enable this undertaking to exert a decisive influence upon another undertaking,
- such powers are derived in particular from:
 - holding directly or indirectly a majority of votes at the shareholders' meeting or general meeting (also as a pledgee or usufructuary), or in the management board of another undertaking (dependent undertaking), also based on agreements with other persons,

- the right to appoint or recall a majority of members of the management board or supervisory board of another undertaking (dependent undertaking), also based on agreements with other persons,
- a situation, where members of an undertaking's management board or supervisory board constitute more than half of the members of another undertaking's (dependent undertaking's) management board,
- holding directly or indirectly a majority of votes in a dependent partnership or at a dependent cooperative's general meeting, also based on agreements with other persons,
- holding rights to the entire or a part of the property of another undertaking (dependent undertaking),
- an agreement to manage another undertaking (dependent undertaking) or transferring profits by such undertaking.

The above examples are the most common situations in which control is acquired.

However, this directory is not closed.

Therefore, acquisition of control will always take place where one undertaking becomes dependent on another undertaking/s, for example:

- granting rights which allow deciding or co-deciding on strategic matters for business activities of another undertaking, in particular regarding such issues as budget, business plan and appointing members of the undertakings' bodies,
- acquisition of control may have a basis in both legal circumstances (e.g. holding shares giving right to over 50 % votes or rights to veto decisions critical to strategic activities of a business) and factual (e.g. having a significant block of shares, for example, 40%, with significant dispersion of votes of other shareholders),
- an agreement between undertakings, which obliges to obtain consent to make decisions of key importance for strategic business activities of the controlled undertaking,

- in practice, in the case of capital companies, acquisition of control takes place most often as a result of obtaining all or most stocks or shares, which allows for exercising decisive influence on decisions made by this undertaking.

Ad 3 Creation of a joint undertaking

- creating a joint undertaking/venture (“JV”) is the second most common concentration notified to the President of the Office,
- JV’s are usually established by creating commercial companies (limited liability company, joint-stock company, general partnership, limited partnership, and limited joint-stock partnership) and cooperatives,
- establishing a civil partnership by undertakings does not require notification, since such a company is not considered to be an undertaking within the meaning of the Competition Act – the partners in the partnership are considered as undertakings.

Obligation to notify includes the creation of the following JV’s:

- transforming a civil partnership into a general partnership, since such a transformation is regarded as creating a JV by undertakings (existing partners of the civil partnership),
- creating a JV by more than one undertaking. Thus, such obligation does not arise in the situation of creating a JV only by one undertaking or by one undertaking and an entity or entities not being undertakings,
- establishing a new JV by all its founders,
- establishing a new JV by one founder and then purchasing or taking up its shares or stocks by the remaining founders,
- change or extension of activities by an existing JV,
- creating a JV that will not perform on a permanent basis all activities of an independent undertaking (e.g. products manufactured by a JV will be supplied exclusively or primarily to its founders or capital groups to which the founders belong),
- creating a JV regardless of the number of votes that the founders will ultimately hold. Therefore, such a concentration must be notified even if one of the founders will have

	<p>shares or stocks granting control of the JV and the other founders will have minority interests.</p> <p><u>Ad 4 Acquisition of assets of another undertaking (the entirety or part of the undertaking)</u> For the purpose of concentration control, assets should be understood as the whole or part of the enterprise of another undertaking. An undertaking (according to the Polish Civil Code) is an organised group of intangible and tangible components intended for conducting the economic activity, including in particular:</p> <ul style="list-style-type: none"> - designation individualising the undertaking or its separate parts (name of the undertaking), - ownership of immovable or movable property, including equipment, materials, goods and products and any other material rights to immovable or movable property, - rights resulting from lease and rent agreements for immovable or movable property and the right to use immovable or movable property resulting from other legal relations, - claims, rights in securities and cash, - concessions, licenses and permits, - patents and other industrial property rights, - copyrights and related property rights, - trade secrets, - books and documents relating to the economic activity. <ul style="list-style-type: none"> • e.g.: acquisition of a production plant, rights to a brand or press title.
<p>B. What is the geographic scope of transactions covered?</p>	<p>The geographic scope of transactions covered can be local, national, regional, EU- wide or worldwide.</p>
<p>C. If change of control is a determining factor, how is control defined and interpreted in practice?</p>	<p>An obligation to notify includes: - the acquisition of sole or joint control,</p>

	<ul style="list-style-type: none"> - <i>change</i> from joint to sole control - <i>change</i> from sole to joint control - change of owners exercising joint control. <p>See point 3A for a detailed analysis of “acquisition of control”.</p>
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<p>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	<ul style="list-style-type: none"> • Partial (less than 100%) stock acquisitions/minority shareholdings can be covered if they confer control, as explained in point 3A, • acquisition of assets is one of the forms of concentrations that are notifiable to the President of the Office, as explained in point 3A, • the combination of the assets with the business of the acquirer can be considered in order to have jurisdiction, • jurisdiction involves “bare” assets purchases.

4. Thresholds for notification	
<p>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</p>	<p>The intent to concentrate is subject to notification in the case where:</p> <ul style="list-style-type: none"> • the combined worldwide turnover of undertakings participating in the concentration in the financial year preceding the year of the notification exceeds the equivalent of EUR 1 bn, or • the combined turnover of undertakings participating in the concentration in the territory of the Republic of Poland in the financial year preceding the year of the notification exceeds the equivalent of EUR 50 mln. <p>Exceptions to the obligation are the following:</p> <p>1) acquisition of control – <i>if</i> the target’s turnover did not exceed in the territory of the Republic of Poland in either of the two financial years preceding the notification, the equivalent of EUR 10 mln,</p>

- 2) creation of a JV - *if* the turnover of any of the undertakings did not exceed in the territory of the Republic of Poland in either of the two financial years preceding the notification, the equivalent of EUR 10 mln,
- 3) merger of two or more independent undertakings - *if* the turnover of neither of these undertakings did not exceed the territory of the Republic of Poland in any of the two years preceding the notification, the equivalent of EUR 10 million,
- 4) acquisition of control over an undertaking/s belonging to one capital group capital and, at the same time, the acquisition of assets of undertaking/s belonging to this capital group, *if* the turnover of the undertaking/s, over which the acquisition of control is to take place and the turnover achieved by the acquired parts in total, the property did not exceed the territory of the Republic of Poland in any of the two financial years preceding the notification, the equivalent of EUR 10 million,
- 5) temporary acquisition or take-up by a financial institution of stocks or shares for the purpose of their resale, *if*:
 - the subject of the economic activity of this institution is investment in stocks or shares of other undertakings, on its own or someone else's account, provided that:
 - this resale takes place within a year from the date of purchase or take-up and that
 - this institution does not exercise rights in these stocks or shares, exclusive of the right to dividend or
 - it exercises these rights only for the purpose of preparing resale of the whole or part of the enterprise, its assets or these stocks or shares,
- 6) temporary acquisition or take-up of stocks or shares for the purpose of securing claims, provided that it does not involve exercising rights from these stocks or shares, other than the right to sell them,
- 7) concentration taking place in the course of the bankruptcy procedure, excluding cases when the acquirer is a competitor or belongs to a capital group being a competitor of the target,
- 8) undertakings belonging to the same capital group.

	The thresholds are not subject to adjustment.
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<ul style="list-style-type: none"> • The thresholds apply to all undertakings from the capital group of the undertakings participating in the concentration, • the turnover shall include the turnover of undertakings directly participating in the concentration as well as of the remaining undertakings participating in the capital groups to which undertakings directly taking part in the concentration belong. <p>See point 3A for definition of control See point 4J for calculation methods.</p>
<p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<ul style="list-style-type: none"> • Only those concentrations that cause or may cause effects on the territory of the Republic of Poland are subject to concentration control under the Competition Act, • therefore, subject to control are also extraterritorial concentrations, i.e. those that occur between undertakings registered outside Poland, provided that those concentrations will exert even potential effects on the territory of Poland, • the Competition Act does not indicate criteria used to assess which extraterritorial concentrations have an effect on the territory of the Republic of Poland, • however, it should be assumed that the condition of the effect on the territory of the Republic of Poland remains met if at least one of the parties to the concentration (incl. capital group to which they belong) achieves turnover in Poland. <p>The Competition Act uses the term "worldwide turnover" and "turnover on the territory of the Republic of Poland to define the turnover thresholds.</p> <ul style="list-style-type: none"> • worldwide turnover includes all turnover, regardless of its geographic origin, • turnover in the territory of the Republic of Poland includes turnover derived from the sale of products and services provided to undertakings or consumers in Poland.

	<p>Revenue from exports of services or goods is not included in this turnover, only the income from imports to the territory of Poland,</p> <ul style="list-style-type: none"> • the relevant criterion of national sales is the location of the customers.
D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	Yes, if its turnover exceeds the notification thresholds outlined in point 4A.
E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	<p>There are no sectors excluded from notification requirements, however, it must be noted that the obligation to notify the intent to concentrate shall not apply in cases of temporary acquisition or take-up by a financial institution of stocks or shares for the purpose of their resale, if:</p> <ul style="list-style-type: none"> - the subject of the economic activity of this institution is investment in stocks or shares of other undertakings, on its own or someone else's account, provided that: - this resale takes place within a year from the date of purchase or take-up and that - this institution does not exercise rights in these stocks or shares, exclusive of the right to dividend or - it exercises these rights only for the purpose of preparing resale of the whole or part of the enterprise, its assets or these stocks or shares.
F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?	No. There are no special threshold calculations for specific sectors. There are however specific turnover calculations, as described in point 4J.
G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is	No. There are no special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions).

required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]	
H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]	No. It does not have such authority.
I. Are current notification criteria catching relevant transactions related to digital markets?	Yes.

Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<ul style="list-style-type: none"> • The notification thresholds are based on the turnover of the parties and capital groups they belong to, • see point 4A for exact turnover thresholds (domestic and worldwide). <p>The calculations necessary to establish whether the turnover thresholds are met are as follows (main principle):</p> <ul style="list-style-type: none"> • The turnover shall include the turnover of undertakings directly participating in the concentration as well as of the other undertakings participating in the capital groups to which the undertakings directly taking part in the concentration belong, • the turnover shall not include the turnover between undertakings belonging to the same capital group. <p><u>General rule regarding calculating turnover:</u> The turnover of undertakings participating in the concentration is the sum of revenues from sales of products and the sale of goods and materials that constitute the normal course of business entrepreneurs, after deduction of granted rebates and other</p>
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reductions and tax on goods and services, as well as other taxes related to turnover, if they have not been deducted, shown in the profit and loss account prepared on the basis of the provisions of accounting.

Specific rules for calculating turnover:

Banks:

turnover as the sum of the following items listed in the bank's profit and loss account for the financial year:

- interest revenue,
- fee and commission income,
- revenue from stocks, shares and other securities,
- the sum of the result on financial operations and foreign exchange result, if positive drawn up according to the accounting provisions for banks, after deduction of any potential value-added tax related to these items, if was not deducted.

Insurers:

turnover as the sum of gross premiums written in the financial year, demonstrated in the technical account for the financial year, drawn up according to the accounting provisions for insurance companies.

Investment funds:

turnover as the amount equal to the net asset value of the fund determined as of the end of the financial year, according to the accounting provisions for investment funds.

Pension funds:

turnover as the amount equal to the net asset value of the fund determined as of the end of the financial year, according to the provisions governing the organisation and functioning of pension funds and the accounting provisions for pension funds.

	<p><u>Brokerage houses:</u> turnover as the sum of revenue from brokerage activities demonstrated in the profit and loss account for the financial year, drawn up according to the accounting provisions for brokerage houses.</p> <p>Undertakings being natural persons:</p> <ul style="list-style-type: none"> • in case of an undertaking referred to in Art. 4 point 1 of the Competition Act, which does not draw up the profit and loss account pursuant to the accounting provisions – the turnover is the sum of revenue obtained in the preceding year from sale of products and from sale of goods and materials, after deduction of granted discounts, abatements and other reductions and tax on goods and services as well as other turnover-related taxes, if they have not been deducted. The sum of revenue is increased by the value of obtained specific subsidies, • in case of an undertaking being a natural person, referred to in Art. 4 point 1 c of The Competition Act – the turnover is the turnover achieved by undertakings over which this person has control within the meaning of the Competition Act. <p><u>Local government units:</u> turnover as revenue obtained by budgetary units of local government units, ie. communes, poviats and voivodeships and contributions from budgetary entities and auxiliary entities of budgetary units of communes, poviats and voivodeships.</p> <p><u>Taking over the management of an investment or pension fund:</u> turnover as the sum of the revenues of the investment fund company or the pension fund company and the amount of net assets of the funds they manage, and the amount of net assets of the funds over which management is taken over.</p>
<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>All entities belonging to one capital group are included in determining relevant investment funds for threshold purposes.</p>

L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?	All entities belonging to one capital group are included in determining relevant investment funds for threshold purposes. Also see point 4A for turnover calculation.
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	Conversion of Euro and other foreign currencies into Polish zlotys, as well as conversion of Polish zlotys into Euro, shall be performed according to the average rates of foreign currencies published by the National Bank of Poland on the last day of the calendar year preceding the year in which the intent to concentrate is notified or a fine imposed.
5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	The Polish merger procedure does not include a pre-notification procedure.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	Not applicable. See point 5A.

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	<ul style="list-style-type: none"> • Notification is mandatory if the intended concentration meets the requirements and thresholds for notification specified in the Competition Act, • the concentration must be notified and approved by the President of the Office before closing the transaction (i.e., the parties must refrain from actually implementing the concentration before clearance is obtained).
B. If parties can make a voluntary merger filing when may they do so?	The concentration control procedure in Poland does not foresee voluntary filings.

<p>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</p>	<ul style="list-style-type: none"> • The transaction must be notified and approved by the President of the Office before closing the transaction (i.e., the parties must refrain from actually implementing the transaction before clearance is obtained), • the earliest stage of notification is not described; however, it is considered that the notifying party shall notify if there exists an intent to concentrate and the notifying party is able to submit all of the required notification information and documents.
<p>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<ul style="list-style-type: none"> • The Competition Act obliges to notify an intent to concentrate, not a concentration that was already implemented, • the intent to concentrate should be real and precise. Depending on the specific case, different legal or factual actions may trigger the obligation to notify, • the most common evidence of the existence of an intent to concentrate are: conditional agreements, preliminary agreements, letters of intent and public summons for sale of shares in the case of public companies, • for instance, a concentration consisting in the creation of a JV should be notified before registering it in a national court register. If a JV is created on the basis of an existing undertaking, such a concentration should be notified before a final agreement (for example a shareholders' agreement) regarding the rules of establishing such a JV enters into force, • as regards the deadline, the parties are obliged to refrain from implementing a concentration, which is notifiable under the Competition Act, until they receive a decision or the time limit for issuing a decision has passed, • there is an exception to this rule, regarding a public offer to purchase or exchange shares. Such a concentration may be implemented before receiving a clearance decision provided that the buyer does not exercise the voting rights attached to the acquired stocks or exercises them solely to maintain the full value of its capital investment or to prevent substantial damage that might be suffered by the undertakings participating in the concentration.
<p>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please</p>	<p>There is no deadline for notifications. Parties may notify the transaction at the most convenient time for them. There is no need for extending the deadline.</p>

describe the procedure and whether there is a maximum length of time for the extension.	
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7. Simplified Procedures	
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<p>A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).</p>	<p>The Competition Act does not include a simplified procedure. However, the merger procedure has two stages, and most cases are concluded in stage I, which takes 1-month.</p> <p>Stage II (4-months) is initiated in cases:</p> <ol style="list-style-type: none"> 1) which are particularly complicated, 2) in which it appears from the information contained in the notification or from other information, including information obtained by the President of the Office in the course of conducted proceedings, that there is a reasonable probability of competition being impeded on the market as a result of the concentration, or 3) where a market study is required. There is one form for all notifications, however, in cases that do not raise competition concerns, less information is required in the notification form, <ul style="list-style-type: none"> • on the other hand, where the concentration has an impact on the market, the notifying party is obliged to submit information stated in part two of the notification form. This part requires submitting information regarding basic information and detailed characteristic of relevant markets affected horizontally or vertically by the concentration.
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<p>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</p>	<p>Not applicable. See point 7A.</p>
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8. Information and documents to be submitted with a notification	
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<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>The following documents must be submitted by the notifying party together with the notification:</p>
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	<ul style="list-style-type: none"> • final or current agreements or documents, identifying acts on basis of which concentration is to be implemented, • in case of a merger, a merger plan or, if the transaction is conducted according to foreign law - equivalent documents, • in case of a public takeover bid - the prospectus or an offer or, if the transaction is conducted according to foreign law - equivalent documents, • annual approved financial statements of all parties taking part in the concentration, from the last financial year preceding the notification (especially balance sheet, profit and loss statement, cash flow statement, statement of changes in equity), • undertakings with consolidated statements attach such statements, • proof of notification fee payment, • if the notifying Party is presented by a lawyer a POA must be submitted together with proof of notification fee payment.
<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<ul style="list-style-type: none"> • As mentioned in point 4A acquisition of assets of another undertaking (the entirety or part of the undertaking) may include acquisition of both tangible and intangible components, • the notifying party is required to specify in the notification form whether the concertation involves acquisition of all or part of an undertaking, the characteristics of the purchased assets (e.g. production line, brand, real estate) and plans for the use of acquired assets, • in respect to digital markets, the President of the Office may consider the amount of user data the companies have, and which will be passed on in the transaction.
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>No documents proving the efficiencies of the transaction are required.</p>
<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p>No additional information is required in case the target company is experiencing financial insolvency.</p>

<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>No. There is no specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids.</p>
<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>No. There are no document legalization requirements. However:</p> <ul style="list-style-type: none"> • only an original document or a copy certified by a public authority, notary, attorney at law, legal adviser, tax adviser, patent attorney or authorized employee of an undertaking may serve as documentary evidence in proceedings before the President of the Office, • evidence in proceedings before the President of the Office is a document drawn up in the Polish language, but • where such document has been drawn up in a foreign language also a translation into Polish of this document or of the part of the document intended to serve as evidence in the proceedings should be submitted, certified by a sworn translator.
<p>G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</p>	<p>There are no rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) specifically for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction).</p>
<p>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</p>	<ul style="list-style-type: none"> • The agency can require third parties to submit information during the review process and undertakings are required to provide all necessary information and documents upon request of the President of the Office, • such a request should include the following information: <ul style="list-style-type: none"> - scope of information required by the authority, - objective of the request, - time limit for providing information, - information about sanctions for failing to provide information or for providing false or misleading information,

	<ul style="list-style-type: none"> • also, public administration bodies are under an obligation to render accessible to the President of the Office the files being in their possession as well as information relevant to proceedings conducted before the President of the Office, • third parties can voluntarily submit information or otherwise contact the agency to intervene - any person shall be entitled to submit, in written form, on their own initiative or upon request of the President of the Office, explanations concerning the essential circumstances of a given case.
I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	Yes. The parties are allowed to submit information beyond what is required in the initial filing voluntarily.
J. Are there different forms for different types of transactions or sectors?	No. There is one merger form for all transactions and sectors.
K. With respect to investment funds: i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market? ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?	i) If the entities that manage the fund also control any other investment funds active in the same relevant market, information must be also provided on the other funds that are controlled by these entities, ii) Yes, if those funds belong to one capital group, iii) Not applicable.

<p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>The notification shall be submitted in Polish.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p>In addition:</p> <p>iii) what are the categories or types of documents for which translation is required;</p> <p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p> <p>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p>	<p>Ad (i-iii)</p> <ul style="list-style-type: none"> • all documents submitted to the President of the Office must be submitted also in Polish, • where a document has been drawn up in a foreign language also a translation into Polish of this document or of the part of the document intended to serve as evidence in the proceedings should be submitted, certified by a sworn translator. <p>Ad (iv)</p> <ul style="list-style-type: none"> • where a document has been drawn up in a foreign language also a translation into Polish of this document or of the part of the document intended to serve as evidence in the proceedings should be submitted, certified by a sworn translator. <p>Ad (v)</p> <ul style="list-style-type: none"> • all documents submitted to the President of the Office must be submitted also in Polish. <p>Ad (vi)</p> <ul style="list-style-type: none"> • depending on the document, summaries or excerpts may be accepted, • these must be submitted also in Polish.

10. Review Periods	
A. Describe any applicable review periods following notification.	<ul style="list-style-type: none"> • One month (stage I) - antitrust proceedings in merger cases should be concluded within one month from the day on which they are instituted, • four months (stage II) – the one-month time limit shall be extended by 4 months in cases that continue in stage II. <p>Time limits may be stopped:</p> <ul style="list-style-type: none"> • both time limits may be further extended by waiting periods for the following: <ul style="list-style-type: none"> - waiting for all the notifying parties to file a notification (in cases when more than one party is required to file a notification and they decide to file separately), - waiting for providing missing information or additional information at the request of the President of the Office, - waiting for providing a reply to the statement of objections, - waiting for a reply to offered commitments or offering commitments, - payment of the fee for the notification.
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	No. There are no different rules for public tenders.
C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?	Yes, requests for additional information suspend the review periods. For more information see point 10A.
D. Is there a statutory or other maximum duration for extensions?	No. There is no statutory or other maximum duration for extensions.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	No. The review periods are suspended by waiting periods for providing missing information or additional information at the request of the President of the Office. Suspending review periods does not require the parties' consent. The review period may be extended also in cases described in point 10A and 10G.

F. What are the time periods for accelerated review of non-problematic transactions, if any?	Concentration proceedings consist of two stages, where stage I allows for a quick review of relatively simple and unproblematic concentrations in a time limit of 1-month. In practice, stage II is initiated in a limited number of cases.
G. If remedies are offered, do they impact the timing of the review?	Yes. If the notifying party offers remedies the time limit for the proceedings is extended by 14 days.

11. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	The parties must refrain from implementing the concentration before receiving a clearance decision. It is a full suspension obligation. The proceedings in concentration control cases shall be terminated: <ul style="list-style-type: none"> • no later than within 1 month in stage I and • no later than within 4 months in stage II. These time limits may be extended as explained in point 10A.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	No. The Parties cannot request a derogation from waiting periods/suspension obligations.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?	No. The applicable waiting periods/suspension obligations are applicable to the proposed concentration as a whole.

D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes. If the decision is not issued within the time limit, the parties are allowed to close the transaction.
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	Not applicable.
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	Not applicable.
G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	Not applicable.

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	<p>The intent to concentrate shall be notified by:</p> <ul style="list-style-type: none"> • the merging undertakings – in merger cases, • acquiring party – in mergers consisting of acquisition of control, • undertakings creating a JV – in the case of merger or creation of joint venture, • undertaking purchasing assets – in case of a concentration involving the purchase of assets. <p>In situations where more than one undertaking is obliged to file a notification (i.e. merger, acquisition of joint control, creation of a joint venture, joint acquisition of assets by several undertakings), they can file a notification jointly or separately.</p>
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No.

C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	There are no such rules as to who can represent the notifying party. Any natural person with full legal capacity may be appointed as a representative in administrative proceedings in Poland. However, in practice, in the majority of cases, the notifying party is represented by qualified lawyers from Polish law firms.
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?	Lawyers representing entrepreneurs participating in the concentration are obliged to attach an appropriate power of attorney to the notification form. Any natural person with full legal capacity may be appointed as a representative in administrative proceedings in Poland. If a power of attorney has been drawn up in a foreign language, the translation into Polish should be submitted as certified by a sworn translator.

13. Filing fees	
A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]	The merger notification is subject to a flat fee of PLN 15 000 (ca. 4 000 USD).
B. Who is responsible for payment?	The above-mentioned fee should be paid by the notifying party/s in cash to the cashier or the bank account of the tax office competent for the seat of the President of the Office.
C. When is payment required?	The payment is required, at the latest, on the day of the notification. However, <ul style="list-style-type: none"> • if the fee will not be paid on the day of submitting the notification, the President of the Office will request the notifying party to pay the fee within 7 days, • if the fee is not paid within 7 days, the notification will not be reviewed.

D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	The fee can be paid directly to the cashier or bank account of the competent local tax office. The proof of payment is required to be attached to the notification form.
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14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	Substantive assessment is based on information supplied by the notifying party. Depending on the case at hand the key procedural stages in the substantive assessment of concentrations may include screening mergers, screening press releases, consulting third parties, incl. regulatory authorities.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	The Office applies significant impediment to the effective competition test. The supplementary test is public interest test.
C. What theories of harm does the agency consider in practice?	The theories of harm considered depend on the particular case at hand and they may include: negative effects on price, quality, quantity, innovation and consumer choice, elimination of competition.
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	Depending on the case at hand the key stages in the substantive analysis of concentrations are: <ul style="list-style-type: none"> • defining the relevant product markets (including, but not limited to, assessment of demand substitutability, characteristics and purpose of the product, price differences, dissimilarity of consumers and their behaviors, time availability, costs of changing the product used, differences in legal regulations, demand substitutability and asymmetrical nature of substitutability), • defining the relevant geographic markets (including, but not limited to, assessment of specifics of the product, transport costs, regulatory, technical, cost and linguistic barriers, differences in consumer preferences, actual trading flows, organization of business activity, the uniformity of relevant market parameters, area where the consumers purchase goods),

	<ul style="list-style-type: none"> horizontal, vertical and conglomerate impact (including, but not limited to, assessment of coordinated and non-coordinated effects, assessment of market shares, factors concerning the shaping of market shares, changes and fluctuations in market shares, factors connected with barriers of entry and competing on the market, the power of the concentration participants and their competitors, closeness of competition, easiness of changing suppliers, complaints of the trading partners and previous infringements of competition law, behaviours of potential competitors, development stage of the market and its dynamics, observed market entries, planned exits from the market, changes in the nature of the competitive process, organisational specificity of the merging entities, specific functioning of the market, customer power, change in the supplier-recipient relationship, asymmetry between production and retail sales in a natural monopoly, natural monopoly at both levels of trade, factors connected with market power and their change as a result of concentration, the nature of the market and probable responses of competitors, regulatory provisions, fulfilling regulatory or quasi-regulatory function on the market). <p>The key stages of substantive analysis depend on the particular case at hand and may differ depending on the type of transaction, for example, concentrations involving JV's may include a more thorough analysis of vertical impact of the concentration.</p> <p>Guidelines on the criteria and procedure of notifying the intention of concentration available at: https://www.uokik.gov.pl/merger_control.php (in English) https://www.uokik.gov.pl/wyjasnienia_w_sprawie_zglaszania_koncentracji.php (in Polish)</p>
<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>A supplementary merger test is a public interest test. In exceptional situations it may be used to authorize anticompetitive concentrations which would have been blocked otherwise. The President of the Office may refrain from issuing a prohibition decision and issue a decision giving consent to the implementation of a concentration as a result of</p>

	<p>which competition on the market will be significantly limited, in particular through the creation or strengthening of a dominant position on the market, if the withdrawal from the concentration prohibition is justified, and in particular:</p> <ul style="list-style-type: none"> • it contributes to economic development or technical progress, • it can have a positive impact on the national economy.
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>The possible outcomes of the review may be the following:</p> <ul style="list-style-type: none"> • <u>decision expressing unconditional consent to a concentration</u> as a result of which competition on market will not be significantly limited, in particular by emergence or strengthening dominant position on the market, • <u>a decision expressing conditional consent to a concentration</u>, if after meeting by the undertaking of certain conditions, competition in the market will not be significantly limited, in particular by the creation or strengthening of a dominant position, • <u>a decision prohibiting a concentration</u> as a result of which competition on the market will remain significantly limited, in particular by the creation or strengthening of a dominant position, • <u>a decision expressing consent to a concentration</u>, if as a result of a concentration there is a significant restriction of competition, in particular by the creation or strengthening of the dominant position, when a withdrawal from a prohibition decision is justified, in particular when the concentration contributes to economic development or progress technical or it may <u>have a positive impact on the national economy</u>.
<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p>The Office prefers structural remedies.</p> <ul style="list-style-type: none"> • in cases where there is a reasonable probability that competition on the market will be significantly impeded as a result of the concentration, the President of the Office issues a statement of objections regarding the concentration, • issuing a statement of objections enables the party to obtain information about the position of the President of the Office regarding the case and prepare a reply to the objections,

	<ul style="list-style-type: none"> • the reply to the statement of objections may be submitted within 14 days from the date of their delivery. Upon a justified request this time limited may be extended by no more than 14 days, • the reply may include additional explanations, evidence or proposal for modifying the concentration so it will not trigger anti-competitive effects. <p>In practice, a statement of objections will precede the submission of commitments.</p> <p>As regards commitments, the President of the Office may impose upon an undertaking an obligation, or accept a commitment on its part, in particular:</p> <ol style="list-style-type: none"> 1) to dispose of the entirety or a portion of the assets of one or more undertakings, 2) to divest control over a specified undertaking or undertakings, in particular by disposing of a specified block of stocks or shares, or to dismiss one or more entrepreneurs from a position on the management or supervisory board, 3) to grant a competitor an exclusive license <p>- specifying in the decision the time limit for meeting the commitments.</p> <p>If the President of the Office does not accept the commitments offered by the party and the party does not accept commitments proposed by the President of the Office within the prescribed time limit (the party may request for its extension) a prohibition decision will be issued.</p>
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15. Confidentiality	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<ul style="list-style-type: none"> • The Competition Act does not foresee premerger notifications, • as regards the filed notifications, their content is not disclosed, • however, the notifications should include a brief (up to 500 words) description of the intended concentration, indicating the form of concentration (merger, acquisition of control, creation of a JV or acquisition of assets), the names of undertakings directly participating in this concentration and as well as the name of the capital group they belong to and areas of activity of undertakings participating in this concentration,

	<ul style="list-style-type: none"> • upon submission, this description (along with the date of the submission and case number) will be posted on the website of the Office, • for those reasons, the descriptions should not contain information constituting business secrets.
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<ul style="list-style-type: none"> • The notifying party has access to the agency's file, • the access is guaranteed at any time during and after the merger investigation. The party may exercise its right several times, • to access the file, the party must submit a request for access on a dedicated form and send it via dedicated e-mail. A date for access to the file will be decided, • however, in cases involving more than one notifying party, the President of the Office may ex officio or on request of any notifying party, limit the right to access the case file by other notifying parties, if the disclosure of certain material in the file would pose a risk disclosure of business or other secrets, protected on the basis of separate provisions, • the party requesting limiting access to certain materials in the case file is obliged to justify it and submit those materials in a non-confidential version, • access is limited in form of a resolution subject to complain, • materials in non-confidential versions will be available for access to other parties of the concentration.
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>As a general rule information obtained in the course of proceedings may not be used in any other proceedings conducted on the basis of separate provisions with exceptions to:</p> <ul style="list-style-type: none"> - penal proceedings conducted by way of a public complaint procedure, or fiscal penal proceedings, - other proceedings conducted by the President of the Office, - sharing of information with the European Commission and competition authorities of the European Union Member States under Regulation No. 1/2003/EC, - sharing of information with the European Commission and competent authorities of the European Union Member States under Regulation No. 2006/2004/EC,

	<ul style="list-style-type: none"> - providing competent authorities with information that may indicate that any separate provisions have been infringed, - civil proceedings for compensation for damage caused by violation of competition law within the meaning of the Act of 21 April 2017 on claims for compensation for damage caused by violation of competition law - to the extent to which the provisions of the said Act permit the use of the information, - providing information to the Chairman of the Polish Financial Supervision Authority pursuant to the Act of 21 July 2006 on supervision over the financial market.
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<ul style="list-style-type: none"> • The fact that a concentration was notified is always publicly available, • a short description of every notified concentration is immediately published on the website (see point 15A), • notification materials are not available to third parties, • the notifying party is obliged to indicate which information in the notification is confidential and submit a non-confidential version of the notification.
<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>The party requesting limiting access to certain materials in the case file is obliged to justify it and submit those materials in a non-confidential version. If the request does not meet these requirements, the President of the Office requests to complete it within a given time limit. The request is subject to assessment by the President of the Office as access can be limited only to case files containing legally protected secrets.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<ul style="list-style-type: none"> • As regards concentrations, only final decisions on concentrations are made publicly available, published on the Office's website, • decisions in which no affected markets were identified are "short" and do not contain an extensive reasoning and confidential information that needs to be redacted, • decisions in which affected markets were identified include an extensive reasoning. Any confidential information is redacted from such a public version.

16. Transparency	
A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.	Annual reports on the activities of the Office are available at: https://www.uokik.gov.pl/reports_on_activities.php (in English)
B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?	Yes, press releases are available at: https://www.uokik.gov.pl/news.php (in English) They are published for each proceeding.
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	The Office publishes press releases regarding most significant cases, which would especially include blocked mergers, which are rare. Also, every decision issued is published on the website of the Office at: https://decyzje.uokik.gov.pl/bp/dec_prez.nsf
E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]	Yes, the Office publishes statistics including information on the number of annual notifications received, decisions issued (broken into decisions concluding proceedings at the 1st stage, decisions concluding proceedings at the 2nd stage, unconditional clearances, conditional clearances, prohibitions), discontinuation of proceedings, returned notifications, the average duration of proceedings as well as decisions imposing fines. The statistics are available at: https://www.uokik.gov.pl/reports_on_activities.php (in English)

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	No. The Office is precluded from sharing with third parties any documents gathered in case files. However, it does not apply to publicly available information or public documents. See also point 15C.
B. Is the agency or government a party to any agreements that permit the exchange of information with foreign	No.

<p>competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	
<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p>	<p>Usage of waivers is not regulated in Polish law. The agency does not use waivers in practice.</p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>Yes, the President of the Office provides certain information specified in separate regulations to the Chairman of the Polish Financial Supervision Authority and information to regulatory authorities in the field of telecommunications and postal services market as well as fuel and energy management, including the results of market research and analyzes, necessary in proceedings conducted by these authorities, under conditions stated in the Competition Act.</p>

<p>18.Sanctions/penalties</p>	
<p>A. What are the sanctions/penalties for: i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency?</p>	<p>i) a maximum fine of 10% of the turnover generated in the financial year preceding the year in which the fine is imposed, ii) a maximum fine of the equivalent of EUR 50 mln, iii) a maximum fine of the equivalent of EUR 50 mln, iv) a maximum fine of 10% of the turnover generated in the financial year preceding the year in which the fine is imposed, v) not applicable, vi-vii) the equivalent of EUR 10 thous. for each day of delay in compliance with decisions.</p>

<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>i) party obliged to notify, ii) notifying party, iii) notifying party as well as any undertakings required to provide all necessary information and documents upon request of the President of the Office, iv)-vii) notifying party.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<ul style="list-style-type: none"> • The President of the Office may impose these sanctions/penalties directly by issuing a decision, • the decision may be appealed to the District Court in Warsaw – the Court of Competition and Consumer Protection within one month from the date the decision was received.
<p>D. Are there any recent or significant fining decisions?</p>	<ul style="list-style-type: none"> • A penalty of over 29 bn PLN (ca 7,6 bn USD) on Gazprom, and of over 234 mln PLN (ca 62 mln USD) spread between 5 remaining companies (Engie Energy, Uniper, OMV, Shell and Wintershall) for constructing and operating Nord Stream 2 gas pipeline without the required consent of the President of the Office. Decision number DKK-178/2020 from 6th October 2020 More information available on the website: https://www.uokik.gov.pl/news.php?news_id=16818 • A penalty of 172 million PLN (ca 45 mln USD) on Engie Energy for not providing information requested by the President of the Office. Decision number DKK-217/2019 from 7th November 2019 More information available on the website: https://www.uokik.gov.pl/news.php?news_id=16818

19. Independence

<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</p>	<p>No. there is no such possibility.</p>
<p>B. What are the grounds for such ministerial intervention?</p>	<p>Not applicable. See point 19 A.</p>
<p>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]</p>	<p>Not applicable. See point 19 A.</p>

<p>20. Administrative and judicial processes/review</p>	
<p>A. Describe the timetable for judicial and administrative review related to merger transactions.</p>	<ul style="list-style-type: none"> • For the administrative timetable for the review of concentrations carried out by the Office of Competition and Consumer protection see point 10A, • as regards the judicial timetable the decisions of the President of the Office may be appealed to the District Court in Warsaw – the Court of Competition and Consumer Protection within one month from the date the decision was delivered to the notifying party, • if the President of the Office considers the appeal justified, s/he may revoke or change his decision in its entirety or in part, • the judgement of the Competition Court might be further challenged before the Appeal Court. The judgement of the Appeal Court in exceptional situations might be challenged before the Supreme Court, from which any decision would be final, • the judicial proceedings may take on average 24-30 months in the Court of Competition and Consumer Protection, 12-18 months in the Appeal Court and 12 months in the Supreme Court.

<p>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</p>	<p>In cases where an appeal against a decision issued by the President of the Office is filed, the President of the Office refers the appeal to the Court of Competition and Consumer Protection together with the case file.</p> <p>If the case file contains materials that involve confidential information, such materials are enclosed in envelopes that are marked as containing confidential information.</p>
<p>C. Are there any limitations on the time during which an appeal may be filed?</p>	<p>The decisions of the President of the Office may be appealed to the District Court in Warsaw – the Court of Competition and Consumer Protection within one month from the date the decision was received.</p>

<p>21. Additional filings</p>	
<p>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</p>	<p>According to separate legal provisions, some types of transactions should be also notified to other authorities, for example, concentrations in the banking sector should be notified to the Polish Financial Supervision Authority.</p>

<p>22. Closing Deadlines</p>	
<p>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</p>	<ul style="list-style-type: none"> • Decisions expire if within 2 years from their issuance date the concentration has not been implemented, • this deadline may be extended: the President of the Office may, at the request of the party of the concentration extend this deadline by one year, if: <ul style="list-style-type: none"> - the party proves that no change has occurred as to the circumstances as a result of which the concentration may cause significant impediment to competition in the market, - this request is made at least 30 days before the expiry of the decision.

<p>22. Post-Merger review of transactions</p>	
<p>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with</p>	<p>The President of the Office may revoke its concentration decisions (unconditional and conditional clearances) in the following circumstances:</p>

<p>conditions? If so, are there any limitations, including a time limit on this authority?</p>	<ul style="list-style-type: none"> • those decisions were based on unreliable information for which undertakings participating in the concentration were responsible, or • undertakings did not comply with the commitments of the conditional clearance decision. <p>Where a decision is revoked the President of the Office shall rule on the merits of the case.</p> <p>If the concentration has already been implemented and restoration of competition in the market is otherwise impossible, the President of the Office may, by way of a decision, and specifying a time limit for its implementation under conditions specified in the decision, order in particular:</p> <ol style="list-style-type: none"> 1) division of the merged undertaking under conditions defined in the decision, 2) disposal of the entirety or a portion of the undertaking's assets, 3) disposal of stocks or shares ensuring control over the undertaking or undertakings, or dissolution of the company over which the undertakings have joint control. <p>However, such a decision cannot be issued once 5 years have passed from the day the concentration was implemented.</p>
<p>B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?</p>	<p>The Office will, in principle, publish information about the results of all significant market research. Information on market research results may vary in form, e.g. a report, summary, press release or tabular summary of data. The form will depend on the scope and the subject of market research. The Office obtains data from market research or any other sources available and suitable for the particular case.</p>