• Poland: PGNiG offers Commitments in Abuse of Dominance Case

On 31 December 2013, the President of the Office of Competition and Consumer Protection (UOKiK) adopted a decision rendering the commitments offered by Polskie Górnictwo Naftowe i Gazownictwo (PGNiG) binding in the framework of proceedings relating to an alleged abuse of dominant position on the retail and wholesale markets of gas supply.

PGNiG, which holds almost 95% of the domestic retail gas supply market and 98% of the wholesale gas supply market, cooperates with its customers on the basis of gas supply contracts. On 3 April 2013, UOKiK launched proceedings against the undertaking, suspecting that the contracts in question contained anti-competitive provisions. More specifically, UOKiK questioned clauses which restricted PGNiG’s customers’ ability to decrease their annual gas purchases in comparison with previous orders, and which prevented them from reselling the gas they had purchased without the consent of PGNiG. In addition, PGNiG introduced a restriction on the so-called ‘back-pack’ principle. If a customer decided to change its gas supplier, the contractual power was to be transferred along with the recipient to the new supplier. However, this solution could only be used by end-users and excluded contractors who wanted to resell the purchased gas.

In UOKiK’s view, the application of the above clauses in PGNiG’s contractual relations with its customers might have had a negative effect on the process of gas market liberalization. The provisions restricted competition between wholesale gas suppliers, risking elimination from the market of gas resellers. Additionally, PGNiG’s contract provisions could have prevented new resellers from entering the market.

After several months of investigation, PGNiG voluntarily committed to change the contested practices. PGNiG undertook to offer to its customers the possibility to remove all types of provisions restricting their ability to reduce annual amounts of gas and restricting or prohibiting their ability to resell gas bought from PGNiG. In response, UOKiK performed, for the first time in its history, a market test of the proposed commitments and sought the opinion of other market participants.

Following the assessment of the commitments and taking into account the replies to the market test, the President of UOKiK decided to adopt a commitment decision. Due to the fact that the practice affected trade between EU Member States, the decision in this case was based on EU law as well as national law.

The UOKiK will monitor the implementation of these commitments.