



POLAND

WARDYŃSKI & PARTNERS

🌐 <http://www.wardynski.com.pl/>

1. Relevant legislation

- [Competition and Consumer Protection Act of 16 February 2007](#) (unified text, OJ of 2021, item 275), articles 13-23 and 94-99 (English text: <https://www.uokik.gov.pl/download.php?plik=7618>; please note that although this is an official translation, it was not updated to the current text of the Act); NOTE: The act to be updated (ECN+ implementation pending)
- [Council of Ministers Regulation of 23 December 2014 on notification of concentration of undertakings](#) (unified text, OJ of 2018, item 367) (English text: <https://www.uokik.gov.pl/download.php?plik=19887>; please note that this official translation was not updated to the current text of the Regulation);
- [Council of Ministers Regulation of 23 December 2014 on calculation of turnover of undertakings participating in a concentration](#) (OJ of 2015, item 79) (no English text available)

2. Authority

Prezes Urzędu Ochrony Konkurencji i Konsumentów (*the Chairman of the Office of Competition and Consumer Protection*); <https://www.uokik.gov.pl/>; service in English: <https://www.uokik.gov.pl/home.php>

3. Types of transactions caught

- The acquisition by one or more undertakings, whether by purchase or subscription for shares or other securities, or through any other means, of direct or indirect control of one or more undertakings;
- the creation by undertakings of a joint undertaking;
- the merger of two or more undertakings;
- the acquisition by an undertaking of part of the assets of another undertaking (the whole or part of an enterprise) where the turnover generated by the acquired assets in Poland - in any of the last two financial years preceding the notification - exceeds the equivalent of EUR 10 million.

A transaction comes within the obligation if either of the turnover thresholds are reached (and in a foreign-to-foreign transaction, when the transaction applies to Poland)

4. Thresholds

The aggregate turnover of all participating undertakings in the financial year prior to notification in excess of EUR 1 billion world-wide or EUR 50 million in Poland; turnover calculation:

- for a merger of two or more undertakings and creation by the undertakings of a joint undertaking – the turnover of the entire capital group of the undertakings;
- for acquisition-of-control - the turnover of the entire capital group of the purchaser and only the turnover of the target and its subsidiaries (not the entire capital group of the seller);
- for acquisition-of-assets - the turnover of the entire capital group of the purchaser and the turnover from acquired assets.

In addition, aggregated turnovers as stated above will have to be increased by:

- turnovers of the companies controlled jointly (with other entities) by undertakings directly participating in the concentration, or by companies belonging to the capital group of the undertaking directly participating in the concentration, proportionately to the number of companies holding joint control;
- turnovers of the entities jointly controlling the capital group of the undertaking directly participating in the concentration, proportionately to the number of companies holding joint control.

The turnover is deemed to be the amount that is obtained in a preceding year from the sale of goods (excluding intra-group sales, rebates and discounts, VAT and other taxes related to turnover).

5. Exceptions

De minimis exemption thresholds:

- acquisition of control: the turnover in Poland of the target undertaking not exceeding the equivalent of EUR 10 million in each of the two years preceding the planned transaction; note: if the concentration based on acquisition-of-control over an undertaking or undertakings which belong to one capital group and simultaneously on acquisition of assets of an undertaking (or undertakings) belonging to the same capital group, such concentration would be exempted from the notification obligation if the turnover of the undertaking(s) subject to control and the turnover generated by the acquired parts of assets did not exceed in total the equivalent of EUR 10 million in each of the two years preceding the planned transaction;
- merger or creation of joint-undertakings: the turnover in Poland of either of the undertakings participating in the concentration (including their capital groups) did not exceed the equivalent of EUR 10 million in each of the two years preceding the planned transaction.

The *de minimis* exemption applies to concentrations irrespective of whether a dominant market position is created, or strengthened.

Other exceptions:

- intra-group transactions (transactions within one capital group);
- temporary acquisitions of shares intended for resale within one year by financial institutions and without exercising voting rights during that time (excluding voting on rights to dividends and rights enabling the preparation of the resale of shares);
- temporary acquisitions of shares for the purpose of securing debt (provided that the purchasers do not exercise voting rights – excluding rights enabling the sale of shares);
- acquisitions of shares in the course of insolvency proceedings (except if the undertaking intending to take over control or the one acquiring part of the assets is a competitor, or a member of a capital group to which competitors of the target company belong).

6. Notifying party(-ies)

- Acquisition of control or acquisition of assets: the undertaking acquiring control or the assets;
- Creation of a joint venture or a merger: all the parties to the joint venture or all undertakings that are merged.

7. Submission deadline

Before closing (see -> stand-still obligation), at any time after an intention to engage in a concentration is documented (by signing a letter of intent, etc.).

8. Filing fee

PLN 15,000/approx. EUR 3,210

9. Proceedings timetable

- **Stage 1:** 1 month
- **Stage 2:** if there is a complicated concentration that raises competition concerns and there is a need to survey the market, or either of the two: additional 4 months
- The statutory periods can be further extended if the authority requests additional information (a notifying party is often requested to do so)
- If a planned concentration would mean a serious restriction of competition, the authority must issue reservations to the intended concentration before the decision is issued during the second stage. An undertaking has 14 calendar days to object to any reservations
- **Appeal:** any decision issued by the authority (clearance, conditional clearance, prohibition) is subject to an appeal to the Competition and Consumer Protection Court within a month after its delivery; the CCPC judgment can be further appealed to the Court of Appeal and to the Supreme Court; the appeal proceedings in all instances can last 1-8 years

10. Availability of pre-notification/informal consultation

Pre-notification consultation available; there are no specific provisions for consultation; consultation possible both in writing and at the meeting

11. Test for clearance/prohibition

- The authority can prohibit a transaction **only** if the concentration would significantly restrict competition, specifically, as a result of the creation, or strengthening of a dominant market position
- Presumption of dominance: 40% market share
- The authority may clear a transaction resulting in significant restriction of competition where there are justified grounds not to prohibit such a concentration, in particular:
 - the concentration will contribute to economic development or technical progress;
 - it may have a positive effect on the national economy

12. Conditional clearance - remedies

- Applicable when a concentration raises significant concerns about restricting competition
- Remedies:

- disposal of the entirety or a portion of the assets of one or more undertakings,
- divestiture of 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,
- granting a competitor an exclusive license;

the authority specifies the time limit for meeting the requirements.

13. Stand-still obligation

- Parties must suspend the implementation of the transaction until the authority issues a decision or until the statutory review period passes (one month or five months plus the time during which the office waits for requested information or documents).
- Implementation of a public bid that has been notified to the authority need not be suspended provided that the acquirer does not exercise any voting rights attached to the relevant securities, or does so only to maintain the full value of the investment or to prevent serious harm to undertakings participating in a concentration.

14. Failure to notify/obtain clearance

- Fine up to 10% of turnover of a party obliged to notify for a year preceding fine imposition for breaching the stand still obligation
- Fine up to fifty-fold average remuneration (currently approx. EUR 57,550) imposed on a manager of a governing body member
- If a concentration significantly restricting competition has been implemented and restoration of competition is otherwise impossible, the authority may order, in a way of a decision, to:
 - divide the merged undertaking under conditions defined in the decision;
 - dispose of the entirety or a part of the undertaking's assets;
 - dispose of stocks or shares ensuring control over the undertaking or undertakings, or dissolve the company over which the undertakings have joint control