

2007 EC Competition Law and Sector-specific Regulatory Case Law Developments with a Nexus to Poland

by

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Introduction

To the best of the author's knowledge, YARS is the first English language publication, which aims to systematically present the developments in competition law and sector-specific regulatory case law with direct relevance to Poland. This paper, devoted to EC antitrust and regulatory case law, will be divided into separate sections covering competition law *sensu stricto* (antitrust and merger control), State aid and sector-specific regulation. The reviews presented reflect the development of each case, so both administrative decisions and judgments (where available) are addressed under the same heading.

This contribution aims to present an overview of significant cases decided by, or pending before, European Community institutions since Poland's accession to the European Union (EU). This approach imposes constraints on the level of detail in the case summaries presented. It is the author's intention to focus on a narrower selection of decisions and developments allowing Polish readers to place the decisions related to Poland in a broader context.

Summary

Poland joined the EU on 1 May 2004. The initial "honeymoon" period has, generally speaking, been a happy one and there have been few prominent cases

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decided at the administrative level (i.e. the European Commission) or brought before the judiciary (i.e. the European Community Courts). That said, usually following notifications by Polish authorities, the Commission has taken a number of important individual decisions in the field of State aid (including the misuse of aid decisions in the steel sector and the Power Purchase Agreements decision), which have led to litigation before the Community Courts. The Commission's decisions in Polish cases have already provided important clarifications (e.g. regarding the application of alternative State aid exemptions to pre-accession restructuring cases in *Technologie Buczek*) and raised significant new legal issues (e.g. the application of the EC State aid rules to pre-accession aid under Protocol No. 8 of the Accession Treaty in *Huta Częstochowa* or an agent's actions triggering pre-accession cartel liability in *BR/ESBR*). Pending actions in these cases can and lead to further case law developments, especially with regard to Protocol No. 8 the Commission's Rescue & Restructuring Guidelines.

Case summaries

I. Antitrust

Butadiene Rubber (BR) and Emulsion Styrene Butadiene Rubber (ESBR)

On 29 November 2006, the Commission adopted a decision¹ finding that five groups of companies, including the Polish company Trade-Stomil Sp. z o.o. ("Trade-Stomil"), have infringed Article 81 EC and Article 53 of the EEA Agreement by agreeing on price targets for products; sharing customers by means of non-aggression agreements; and exchanging commercial information relating to prices, competitors and customers for certain types of synthetic rubber, including butadiene rubber (BR) and emulsion styrene butadiene rubber (ESBR).² Another Polish company, Dwory S.A. (renamed Synthos S.A.) was also targeted by the Commission's investigation but in the end, its liability could not be established because there was insufficient evidence of its participation in this cartel³.

¹ Commission Decision C (2006) 5700 final of 29 November 2006 in Case COMP/F/ 38.638 – Butadiene Rubber and Emulsion Styrene Butadiene Rubber. A non-confidential version of the Decision is available at <http://ec.europa.eu/comm/competition/antitrust/cases/decisions/38638/en.pdf>.

² The main customers for BR and ESBR are tyre manufacturers such as Michelin, Pirelli and Goodyear, as well as producers of shoe soles and floor coverings.

³ See paragraph 88 of the Decision.

The Commission's investigation was prompted by leniency applications lodged in December 2002 and January 2003, in accordance with the 2002 Leniency Notice, by the German company Bayer AG. In March 2003, the Commission carried out a dawn raid at Dow Deutschland GmbH & Co. OHG, which subsequently also applied for leniency.

The Commission based its decision principally on documents provided by the leniency applicants, which included corporate statements and witness testimonies as well as notes discovered by the Commission during the dawn raid. The Commission found that the majority of the cartel agreements were made either before or after a meeting of the European Synthetic Rubber Association. During these meetings, the participants agreed on prices and exchanged information on key customers and the amounts of synthetic rubber supplied to them. Bayer's statements were to a large extent confirmed by Dow. At a later stage, Shell also admitted to having participated in this cartel.

The Commission fined the five groups of companies a total of EUR 519 million. Bayer received full immunity from fines under the Commission's leniency programme, as it was the first company to inform the Commission about the cartel. Shell's admission was received too late in the investigation to qualify for a reduction in fines since its contribution to the findings of the case was not significant. Trade-Stomil was fined EUR 3.8 million out of the total fine imposed on the entire cartel.

In setting the fines, the Commission took into account the size of the EEA market for the product, the duration of the cartel (it operated from 1996 until 2002) and the size of the firms involved. The fines for Eni, Shell and Bayer were increased by 50% because of their previous participation in other cartels (polypropylene, PVC and citric acid).

Similarly to all other addressees of this decision (except Bayer)⁴, Trade-Stomil has lodged an appeal seeking its annulment⁵. It has argued, *inter alia*, that the Commission has failed to prove to the required standard that Trade-Stomil either participated in the cartel or that it was liable for the infringement (in the BR/ESBR decision, the Commission deemed Trade-Stomil liable for the infringement as Dwory's independent distributor). It has also made a number of arguments challenging the level of its fine⁶.

It is noteworthy that while the appeals are pending, on 21 December 2007, Cooper Tire & Rubber Co. (the second-largest U.S. tyre maker) and 25 other

⁴ Cases T-38/07, *Shell Petroleum and Others v Commission*; T-42/07, *Dow Chemical and Others v Commission*; T-44/07, *Kaučuk v Commission*; T-45/07, *Unipetrol v Commission*; and T-59/07, *Polimeri Europa v Commission*.

⁵ Case T-53/07, pending.

⁶ For more detail, see OJ [2007] C 95/45.

companies have brought before the High Court of England & Wales follow-on damage actions against the members of the cartel, including Trade-Stomil.

II. Mergers

None of the merger cases with a nexus to Poland reviewed by the Commission so far have involved an in-depth market review⁷ or have led to significant case law developments. One case of note, however, is the *Unicredito/HVB* decision that led to a political controversy regarding the Commission's competence in the merger area. A few other noteworthy cases involved close cooperation between the Commission and the Polish Competition and Consumer Protection Authority (UOKiK) under the referral provisions of the EC Merger Regulation (ECMR).

Unicredito/HVB (2005)

On 13 September 2005, an Italian financial institution, Unicredito Italiano SpA (Unicredito), notified the Commission that it has acquired control over another bank, Bayerische Hypo- und Vereinsbank AG (HVB)⁸. Both Unicredito and HVB had, at that time, holdings in the Polish banking sector (Pekao S.A. and Bank Przemysłowo-Handlowy S.A., respectively). The Commission examined, amongst other things, the effects of the concentration on the Polish financial markets and, on 18 October 2005, unconditionally approved it.

Poland appealed⁹ to the Court of First Instance (CFI) claiming that the Commission has failed to properly examine the concentration since it had not taken into account the existence and effects of Article 3(9) of the Pekao privatization agreement. Poland also argued that the Commission had “inappropriately evaluated concentrations on the Polish banking market and erred in its appraisal of the effect of the proposed concentration would have on competition within the market for investment funds and a number of specific markets within the Polish banking sector”¹⁰.

⁷ E.g. on 18 October 2005, the Commission opened an in-depth (Phase II) investigation into the proposed acquisition of Eurotecnica by Agrolinz Melamine International. The case was referred to the Commission by the German Bundeskartellamt and the Polish UOKiK. However, the notifying parties withdrew from the transaction and the related Commission's documents are not publicly available.

⁸ Case COMP/M.3894.

⁹ Action brought on 6 February 2006 in Case T-41/06 – *Poland v. Commission* (withdrawn).

¹⁰ Application in Case T-41/06, first head.

This appeal was withdrawn on 10 April 2008, following a change in the Polish government.

PKN Orlen's Acquisitions – Unipetrol (2005) and Mazeikiu (2006)

In 2005 and 2006, PKN Orlen acquired two petrochemical companies in the Czech Republic (Unipetrol a.s.) and Lithuania (AB Mazeikiu Nafta). Both transactions exceeded the ECMR thresholds and had to be approved by the Commission under the new test of “significant impediment of effective competition”.

The Unipetrol acquisition was finally notified on 11 March 2005, and unconditionally approved on 20 April 2005¹¹. In line with its previous decisions, the Commission examined, in particular, the market for non-retail sales of refined oil products and bitumen (national scope) and the market for lubricating petroleum oils (EEA scope). After the examination, the Commission decided not to oppose the notified concentration.

The Mazeikiu acquisition was notified on 29 September 2006, and unconditionally approved on 7 November 2006¹². This concentration had an effect on a number of markets. Horizontally, the operation affected the market for ex-refinery/cargo sales of diesel, gasoline and LPG (EEA-wide) and the national markets for non-retail sales of diesel and gasoline in Poland. It also vertically affected the national markets for the sale of diesel and gasoline in Poland, Lithuania, the Czech Republic and Estonia, as well as the market for retail sales of motor fuels in Poland. The Commission examined in particular a distinction between ex-refinery cargo sales and non-retail sales, as well as the geographic scope of the ex-refinery/cargo sales market (EEA or narrower, e.g. CEE). Typically for a Phase I case, the Commission did not need to reach a final conclusion on these points.

Linde/BOC (2006)

On 6 April 2006, Linde AG notified its acquisition of BOC Group plc.¹³ The concentration was approved on 6 June 2006 after a Phase I investigation, subject to extensive commitments. Of particular note is that the activities of Linde and BOC overlapped on a number of markets for industrial and specialty gases in Poland and the UK. The transaction would have created a dominant player in various Polish gas markets and would have strengthened BOC's dominant position on various British markets. On 27 April 2006, the

¹¹ Case COMP/M.3543.

¹² Case COMP/M.4348.

¹³ Case COMP/M.4141.

Polish UOKiK submitted a request for a partial referral of this case¹⁴ since it believed that the concentration would affect competition on a number of national markets in Poland, in particular, the bulk and cylinder supply of various industrial gases, helium retail supply as well as the supply of calibration mixtures and refrigerants. The request was withdrawn on 18 May 2006 after the parties had submitted remedies that addressed all UOKiK's concerns¹⁵.

Carrefour/Ahold (2007)

On 16 February 2007, the Commission received notification of a proposed acquisition of control by Carrefour Nederland B.V. (part of the French Carrefour group) of Ahold Polska Sp. z o.o.¹⁶ Carrefour is internationally active in food and non-food retailing, Ahold Polska is active in the same field but solely in Poland. The main horizontal overlap between Carrefour and Ahold arose in the retail market for daily consumer goods retail through modern distribution channels (supermarkets, hypermarkets and discounters) in Poland.

UOKiK made a request under Article 9(2)(b) of the ECMR asking the Commission to cede jurisdiction to investigate the proposed merger. The Commission accepted that the transaction's effects on competition would affect a number of markets within Poland, which present all the characteristics of distinct markets, and which do not constitute a substantial part of the Single Market. Thus, on 10 April 2007, the Commission referred the case to the Polish UOKiK under Article 9(3) of the ECMR (which removes the Commission's discretion to act).

The transaction was conditionally approved by UOKiK on 28 June 2007, subject to divestiture by Carrefour of nine clearly identified supermarkets by 31 December 2008¹⁷.

III. State aid

This section covers the Commission's decisions that followed a formal investigation procedure under Article 88(2) EC taken in the period up to the end of 2007. The cases involve the steel sector (Huta Częstochowa, Huta Stalowa Wola, Technologie Buczek and Huta Arcelor Warszawa), as well as

¹⁴ Pursuant to Art. 9(2)(a) ECMR.

¹⁵ The parties committed to divest, among other things, the whole of BOC's Polish gas business and the whole of Linde's UK gas business (thereby completely removing their overlaps in all relevant Polish and UK markets).

¹⁶ Case COMP/M.4522 – Carrefour/Ahold Polska.

¹⁷ Decision DOK – 86/2007.

other sectors (Techmatrans, Bison-Bial, FSO, Poczta Polska and PPAs). With minor exceptions relating to the mixed nature of the decisions, this section does not cover schemes¹⁸, pending cases¹⁹, cases withdrawn²⁰ or instances, where the Commission found no aid²¹.

A. Rescue and restructuring aid

Article 87(1) EC sets out a general prohibition of State aid, subject to a limited number of exceptions. The normal operation of the market demands that inefficient firms go out of business. While rescue and restructuring aid may keep firms in difficulty viable, this is often at the expense of their competitors. Therefore, rescue or restructuring aid granted to failing firms is only permitted in limited and strictly defined circumstances.

Steel sector cases

Restructuring aid is generally prohibited in the steel sector²². However, new Member States are usually given a one-off opportunity to restructure their steel industry with the help of State aid. Protocol No. 8 of the Accession Treaty²³ granted this type of derogation to Poland so that it could support, in the context of accession, companies identified in the National Steel Restructuring program (“NRP”)²⁴. A maximum amount of aid to be granted before the end of 2003 was set at approximately PLN 3.4 billion (EUR 850 million). The granting of aid was conditional on: the adoption and full implementation of a restructuring plan, attaining economic viability of the benefiting companies by 2006, and a significant reduction of production capacity in excess of one million tons. Two of the Protocol No. 8 cases (involving Technologie Buczek and Huta Arcelor Warszawa) led to a formal investigation. In the case involving

¹⁸ E.g. Case C-34/2007 – Maritime transport.

¹⁹ E.g. the Polish shipyard cases (C-17/2005 – Stocznia Gdynia, C-18/2005 – Stocznia Gdańsk and C-19/2005 – Stocznia Szczecińska Nowa).

²⁰ E.g. Case C-49/2005 – Chemobudowa Kraków.

²¹ E.g. Case C-32/2006 – Huta Cynku Miasteczko Śląskie.

²² Communication from the Commission on Rescue and Restructuring aid and closure for the steel sector, OJ [2002] C70/21.

²³ Protocol No. 8 of the Accession Treaty on the restructuring of the Polish steel industry, OJ [2003] L236/948. A similar Protocol No. 2 applies to the Czech Republic, OJ [2003] L236/942.

²⁴ Protocol No. 8 identified eight steel producers. Three of them eventually went into liquidation (Technologie Buczek, Huta Andrzej and Huta Batory), while five companies restored their economic viability (Mittal Steel Poland, Huta Arcelor Warszawa, Huta Bankowa, Huta Łabędy and Huta Pokój).

Mittal Steel Poland (ex Polskie Huty Stali S.A.), the largest steel producer in Poland, the Commission accepted modifications of the ongoing restructuring process without opening a formal investigation²⁵. Additionally, two formal investigations were opened involving steel producers that were outside of Protocol No. 8 (Huta Częstochowa and Huta Stalowa Wola).

Huta Częstochowa

Huta Częstochowa S.A. (HCz) is Poland's second-largest steel producer. Due to financial difficulties, it went into liquidation at the end of 2002 and consequently was removed from the list of beneficiaries covered by the NRP. As a result, it was later not included in Protocol No. 8 to the Accession Treaty.

In October 2003, the Polish government adopted a law allowing public debt to be written off in relation to failing companies for the purposes of restructuring. Public law creditors (e.g. social security or tax offices) and creditors from commercial transactions (e.g. energy delivery) were split into two different groups that, in exchange for a waiver of their claims, received different assets (sold to pay parts of the claims). HCz subsequently planned comprehensive restructuring that included taking advantage of the debt waiver (even though the company was not eligible for State aid under Protocol No. 8).

On 19 May 2005, the Commission opened a formal investigation²⁶ into the restructuring process of HCz's²⁷. In particular, the Commission considered that a waiver of public debt implied foregoing State revenue in a situation, where no private creditor would have done the same. According to settled case law, where a debtor in financial difficulties is proposing to reschedule debt to avoid liquidation, each public creditor must, at the very least, carefully balance the advantage inherent in obtaining the offered sum according to the restructuring plan and the sum that could be recovered due to possible liquidation. If liquidation brings higher proceeds than restructuring, the waiver of public claims qualifies as State aid²⁸.

Considering the data provided by the Polish authorities (including a comprehensive analysis of all claims concerned, which was prepared by external experts), on 5 July 2005, the Commission adopted a mixed decision²⁹. On the

²⁵ Case N 186/2005, OJ [2006] C 12/2.

²⁶ OJ [2004] C 204/6.

²⁷ Case C-20/2004 (ex NN/25/2004) – Restructuring aid to steel producer Huta Częstochowa.

²⁸ C-342/96, *Tubacex* [199] ECR I-2459, para. 46; C-256/97, *DMT* [1999] ECR I-3913, para. 21 and T-152/99, *HAMSA* [2002] ECR II-3049, para. 167.

²⁹ OJ [2006] L 366/1.

one hand, it found that the restructuring scheme did not involve State aid. In particular, the decision established that aid evaluation may take into account a realistic bankruptcy scenario (in which bankruptcy proceedings are more time-consuming and costly than restructuring). On this basis, and following a detailed assessment of all claims and waivers, the Commission concluded that the write-off of public claims complied with normal market behaviour, as it offered every public creditor a solution that was more advantageous than bankruptcy.

On the other hand, the Commission also decided that around EUR 4 million of restructuring aid given to the company between 1997 and 2002 constituted aid incompatible with EC State aid rules and thus, had to be returned. While the recovery concerned a period of time before accession (where the Commission normally has no jurisdiction), it was ordered under Protocol No. 8, which covers the time frame starting before and continuing after accession and clearly differs from other State aid provisions of the Treaty, such as the interim mechanism³⁰. The Commission considered that Protocol No. 8 could be regarded as *lex specialis* that, with regard to its subject matter, would supersede any other provision of the Accession Act.

The decision cleared the way for the sale of the company to the Ukrainian steel producer, Donbass. However, Donbass³¹, HCz³² and other third parties³³ appealed the decision. On 11 December 2006, the CFI dismissed HCz's application for interim measures³⁴. These cases are pending before the CFI on grounds of merit.

Huta Stalowa Wola

On 8 October 2004, Poland informed the Commission about measures granted to support the restructuring of Huta Stalowa Wola S.A. (HSW), a Polish industrial machinery company³⁵. According to the Polish authorities, as the aid was granted before accession, it could not be considered still applicable after. On 23 November 2005, the Commission opened a formal investigation into the restructuring aid given to HSW³⁶. The examination focused on the write-off of

³⁰ See Kuik K., "State Aid and the 2004 Accession – Overview of Recent Developments" (2004) 3(3) *European State Aid Law Quarterly*.

³¹ Case T-273/06, *ISD Polska and Industrial Union of Donbass v. Commission*, application filed on 11 September 2006.

³² Case T-288/06, *Huta Częstochowa v. Commission*, application filed on 18 October 2006.

³³ Case T-291/06, *Operator ARP v. Commission*, application filed on 18 October 2006; Case T-297/06, *Majatek Hutniczy v. Commission*, application filed on 17 October 2006.

³⁴ Order of 11 December 2006 in Case T-288/06R *Huta Częstochowa v. Commission*.

³⁵ Case C 44/2005 (ex NN 79/2005, ex N 439/2004) – Restructuring aid in favour of Huta Stalowa Wola S.A.

³⁶ OJ [2006] C 34/5.

public liabilities, amounting to EUR 17.3 million, which was granted without the Commission's approval after Poland's accession to the EU³⁷. Following the formal investigation, on 20 December 2006, the Commission found that the measures complied with the Rescue and Restructuring Guidelines in that: (i) the restructuring plan restored the long-term viability of HSW, (ii) the aid was limited to the minimum necessary through a substantial private financing contribution (in excess of 50%), and (iii) HSW offered compensatory measures (divestiture of a number of profitable subsidiaries), which limited the scope and scale of its activities³⁸.

Before the Commission's decision was taken, HSW modified, however, its restructuring plan following changes in market conditions³⁹. On 10 October 2007, the Commission opened an in-depth investigation⁴⁰ to establish whether the modified restructuring plan would enable the company to become profitable long-term⁴¹. Under Article 9 of the Procedural Regulation, this is a necessary step to revoke the original decision and for a new decision to be taken⁴².

The Commission's new investigation has focused on the capital injection granted to HSW by the Polish Industrial Development Agency in 2003 and 2004. This loan took the form of a conversion into equity of two loans (already found to constitute State aid) intended to improve its liquidity and raise additional funds. The Commission is concerned that the capital injection would bring an additional advantage to HSW. During the pending investigation, the Commission will assess whether: (i) the aid is limited to the necessary minimum, (ii) there is no increase in the amount of aid, and (iii)

³⁷ The Commission had no competence to assess the compatibility of measures (amounting to EUR 41.2 million) granted before accession. These measures were, nevertheless, taken into account in the general assessment of post-accession aid.

³⁸ OJ [2007] L 112/67.

³⁹ The Commission took a final positive decision on 20 December 2006 on the basis of the restructuring plan dated February 2006 and submitted by Poland on 9 March 2006. The Polish authorities notified an updated version of the plan dated November 2006 on 2 February 2007, i.e. after the original decision was already adopted (Case C 43/07 (ex N 64/07)).

⁴⁰ OJ [2007] C 298/10.

⁴¹ The main modification is a change to the form of the aid: instead of HSW reimbursing two loans and interest on these loans, the Polish Industrial Development Agency would swap the nominal value of the debt into equity and thus become a shareholder of HSW. Other changes would include: postponements of organisational restructuring and a decision to undergo a less ambitious employment restructuring.

⁴² Article 9 of the Procedural Regulation stipulates that "*the Commission may revoke a decision [...] after having given the Member State concerned the opportunity to submit its comments, where the decision was based on incorrect information provided during the procedure which was a determining factor for the decision. Before revoking a decision and taking a new decision, the Commission shall open the formal investigation procedure pursuant to Article 4(4). [...]*".

the original compensatory measures are proportional to the negative effects of the aid.

Technologie Buczek S.A.

In March 2002, a steel producer, Huta Buczek (renamed Technologie Buczek S.A. (TB) from 7 May 2003) submitted a restructuring plan to the Polish authorities. The plan earmarked for TB State aid amounting to approximately PLN 16.2 million. It became part of the NRP, which was submitted to the European institutions and was assessed by the Commission on 25 March 2003. The aid to TB was subsequently incorporated into Protocol No. 8. Poland's compliance with Protocol No. 8 was monitored on a bi-annual basis. Following its independent evaluation in 2005 and a series of letters exchanged with the Polish authorities, on 7 June 2006, the Commission opened a formal investigation into the aid granted to the Technologie Buczek Group⁴³, which, having failed to properly implement its restructuring plan had no option but to file for bankruptcy in 2006⁴⁴.

The Commission considered that the Technologie Buczek Group (viewed as one recipient⁴⁵) misused the restructuring aid, which it had received in 2003. In particular, the Commission had serious doubts as to the proper use of State aid provided to this Group, which had not fully implemented its restructuring plan (as explicitly stipulated in point 9 of Protocol No. 8), which was directly proven by the fact that it did not achieve viability by 2006 and supported by the findings of the independent consultant. The potential misuse concerned the aid granted in 2002 and 2003 (approximately PLN 2.2 million) as well as the aid granted between 1997 and 2001 (PLN 4.4 million). Moreover, the Commission considered that additional aid might have been granted after 2003 (through the budgetary grant for employment restructuring and non-enforcement of the outstanding public debt).

On 23 October 2007, the Commission adopted a negative decision against the Technologie Buczek Group⁴⁶ finding that the non-enforcement after 2003

⁴³ Technologie Buczek Group included Technologie Buczek S.A. and its four subsidiaries with significant business activities: Buczek Automotive Sp. z o.o. (ex P.U.R.M. REMEBUD Sp. z o.o.), Huta Buczek Sp. z o.o., Buczek – HB – Z.P.R. Sp. z o.o. and P.U.T SAMKOL Sp. z o.o.

⁴⁴ Case C-23/2006 (ex NN 35/2006) – Aid to steel producer Technologie Buczek Group, OJ [2006] C 196/23.

⁴⁵ In particular, Huta Buczek Sp. z o.o. and Buczek Automotive Sp. z o.o. were viewed as parts of the economic entity of Technologie Buczek Group as they were: (i) 100% owned by Technologie Buczek, (ii) received their assets without adequate consideration, and (iii) benefited from the restructuring aid.

⁴⁶ OJ [2008] L 116/26.

of public debts of approximately PLN 20.8 million (approximately EUR 5.3 million) amounted to State aid incompatible with the EC State aid rules, and that certain amounts designated as restructuring aid, training aid, environmental aid and employment aid, totalling PLN 1.4 million, had been misused. The Commission ordered the recovery of the aid resulting from public debt non-enforcement from Huta Buczek Sp. z o.o. and Buczek Automotive Sp. z o.o. in proportion, to the benefit actually obtained by them (approximately PLN 13.6 million and PLN 7.2 million, respectively), and recovery of the misused aid from TB.

The decision was appealed by Huta Buczek⁴⁷, TB⁴⁸ and Buczek Automotive⁴⁹ on a number of (mostly procedural) grounds. The appeal is pending before the CFI.

Arcelor Huta Warszawa

Arcelor Huta Warszawa (AHW) is one of the largest steel producers in Poland, with an annual capacity of almost one million tons. In 2005, Arcelor took over the company, known at that time as Huta Lucchini Warszawa (HLW), from Lucchini.

The NRP allocated PLN 322 million (approximately EUR 73 million) of restructuring aid to HLW. The restructuring, which mainly consisted of hot rolling mill investments and repayment of short-term liabilities, was to be financed primarily by a State-guaranteed bridging loan of about PLN 300 million (approximately EUR 68 million).

HLW obtained approximately 50% of the amount approved in the NRP and used most of it to repay a long-term loan, instead of carrying out the investments and restoring the company's viability. When Arcelor took the company over, it decided to opt for a more ambitious investment strategy⁵⁰ and amended HLW's individual business plan (which required the Commission's approval).

On 6 December 2006, the Commission launched a formal investigation⁵¹. It considered that the use of the loan to pay off old debts was neither indicated in the restructuring plan nor necessary for the restructuring, and endangered the company's ability to achieve economic viability. Therefore, the restructuring

⁴⁷ Case T-440/07, *Huta Buczek v. Commission*, application filed on 5 December 2007.

⁴⁸ Case T-465/07, *Salej and Technologie Buczek v. Commission*, application filed on 20 December 2007.

⁴⁹ Case T-1/08, *Buczek Automotive v. Commission*, application filed on 8 January 2008.

⁵⁰ Specifically, Arcelor wanted to replace its existing hot rolling mill by a new hot rolling mill (which required additional investments).

⁵¹ Case C-51/2006 (ex N 748/2006) – *Misuse of aid to Arcelor Huta Warszawa*, OJ [2007] C 35/41.

aid given to HLW and approved by the Commission under Protocol No. 8 could be potentially incompatible with the Common Market and subject to recovery.

On 12 December 2007, the Commission decided that, prior to becoming part of the Arcelor group, AHW had misused the restructuring aid it had received in 2003 under Protocol No. 8. While it remained undisputed that after Arcelor took the company over in 2005 it became viable and repaid the State-guaranteed loan, the Commission considered that the advantage stemming from the aforementioned guarantee during a one year period amounted to unlawful State aid.

As the investments approved in the original restructuring plan were never implemented and the aid was not used for the indicated purposes, the Commission required the recovery of the aid (and AHW agreed to voluntarily repay the EUR 2 million of unlawful aid). The finding of the misuse of the aid received could not have been influenced by subsequent commitment to carry out the original investments because it could not “heal” the earlier misuse (see Lienemeyer and Mazurkiewicz-Gorgol 2008).

The Commission ordered, however, only the recovery of the aid actually misused (an interest subsidy for the loan amounting to approximately EUR 2 million) and not of the entire restructuring aid granted. This type of solution differs from the finding in the *Technologie Buczek* decision, where the Commission objected to the compatibility of the aid because the restructuring plan was not implemented in full and the company went into liquidation. AHW restored viability and thus paid only an amount equal to an interest subsidy, whereas *Technologie Buczek* never restored viability and therefore had to repay the entire amount of the restructuring aid which it had received.

Other restructuring cases

Techmatrans S.A.

On 21 August 2006, Poland notified the Commission of the planned aid for *Techmatrans*⁵², a Polish State-owned company specialising in technological transportation devices and industrial plant systems for the automotive, metallurgical and construction sectors. Although the company met the SME thresholds, its State ownership placed it in the large enterprise category for the purposes of State aid assessment. On 21 February 2007, the Commission opened a formal investigation into the proposed capital injection of EUR 0.8 million for *Techmatrans*⁵³. The Commissions had doubts: (i) whether the

⁵² Case C-6/07 (ex N 558/06) – Restructuring aid to *Techmatrans S.A.*

⁵³ OJ [2007] C 77/43.

intended restructuring would be sufficient to restore long-term viability of the company (due to the low projected profit margin); (ii) regarding the low level of the proposed “own” contribution (3% by 2010); and (iii) regarding the economic rationality of the proposed compensatory measures.

During the formal investigation, the Polish authorities provided detailed data on the proposed investment programme that allayed the doubts regarding the restoration of economic viability. In particular, they provided examples of private companies active in the same sector that generated similarly low profit margins (2-4%). The Commission also took into account the proposed privatization of Techmatrans scheduled to take place in 2009/2010. The Polish authorities also showed that “own” contribution was indeed in excess of 50% (over PLN 3 million out of a total of under PLN 6 million). Finally, the company’s intended withdrawal from one of its activities (the design and sale of technological transport steering systems) was deemed rational. The Commission, therefore, authorised the implementation of the State aid under Techmatrans’ restructuring plan⁵⁴.

Bison-Bial S.A.

On 4 May 2006, the Polish authorities notified the Commission of a planned restructuring aid for Bison-Bial S.A., a Polish machine tools manufacturer, in the form of a public debt write-off and a loan (granted on preferential conditions) totalling EUR 7.6 million (intended to repay past public debt)⁵⁵.

Following a preliminary assessment, the Commission expressed doubts whether the restructuring plan would be sufficient to restore the company’s long-term viability and would avoid difficulties similar to those faced by the company in 2001 (which led to a decrease in the workforce from 1,680 to 950 employees)⁵⁶.

After a formal investigation, the Commission decided that the aid would be compatible with EC State aid rules provided that several conditions were met. First, the restructuring plan had to be implemented in full by the end of the prolonged restructuring period (i.e. 2010). Second, Bison-Bial’s existing site had to be sold and a significant additional investment (including a change to the manufacturing plant’s location) had to be made by the end of 2010. Finally, Bison-Bial had to sell, by the end of 2009, one of its profitable production divisions, therefore decreasing its product range by 46% and the number of machine tools by 12%, as well as reducing turnover by 13%⁵⁷. These provisions,

⁵⁴ OJ [2008] L 86/28.

⁵⁵ Case C-54/2006 (ex N 276/2006) – Restructuring aid to Bison-Bial S.A.

⁵⁶ OJ [2007] C 23/20.

⁵⁷ The Commission rejected two other alternative proposals, namely the reduction of the number of goods produced by 5% or the sale of 5% of the company’s machines.

together with the significant “own” contribution (in excess of 50%) as well as the fact that the State aid had been granted in the form of a reimbursable loan, allowed the Commission to approve the notified State aid to Bison-Bial⁵⁸.

Fabryka Samochodów Osobowych S.A.

The restructuring aid for Fabryka Samochodów Osobowych S.A. (FSO) was the first case where the Commission opened a formal investigation procedure on pending State aid measures notified by a new Member State.

On 30 April 2004, the Polish authorities notified the Commission, in light of the interim procedure set out in the Accession Treaty, its decision to grant restructuring aid to FSO (previously Daewoo-FSO Motor S.A.), one of the largest Polish producers of passenger cars located in Warsaw⁵⁹. FSO faced a difficult economic situation in 2000, mainly due to the bankruptcy of its largest shareholder Daewoo Motor Corporation Ltd. Following these events, FSO became State-controlled and adopted, or planned to adopt, various restructuring measures amounting to approximately EUR 172 million (planned for the period of time between the end of 2003 and the end of 2006).

On 19 January 2005, the Commission launched a formal investigation into these measures⁶⁰. In the opening decision, the Commission considered that certain aid, amounting to approximately EUR 35 million, was considered to have been granted before, but “not applicable after accession” and was, as a consequence, outside the Commission’s jurisdiction. As a result, the investigation focused on other measures that, according to the Commission, had not yet been granted. On 20 December 2006, the Commission adopted a decision, in which it confirmed that the majority of the restructuring measures (totalling approximately EUR 75 million⁶¹) fell under its jurisdiction and conditionally approved them, subject to production and sales caps applicable until February 2011⁶². The Commission explained that the reason for the imposition of these conditions was to avoid shifting the difficulties in the car manufacturing sector to other firms.

⁵⁸ See: http://ec.europa.eu/comm/competition/state_aid/register/ii/doc/C-54-2006-WLWL-en-12.09.2007.pdf.

⁵⁹ Case C-3/2005 (ex N 592/2004) – Restructuring aid to Fabryka Samochodów Osobowych S.A.

⁶⁰ OJ [2005] C 100/2.

⁶¹ The decision of 19 January 2005 launching a formal investigation (based on the initial Polish notification submitted on 30 April 2004) considered approximately EUR 138 million to be potential new aid (largely due to the significantly larger amount of the notified State guarantee for a future investment loan).

⁶² OJ [2007] L 187/30.

On 22 March 2007, FSO lodged an appeal⁶³ against the decision alleging breaches of the principle of proportionality, the principle of free exercise of economic activity, a manifest error of appraisal of the facts of the case, as well as a breach of Article 253 EC. The appeal is pending before the CFI.

B. Other State aid cases

Poczta Polska

On 30 April 2004, as part of the “interim mechanism”⁶⁴, Poland notified the Commission of two aid schemes granted to Poczta Polska, the Polish public postal operator entrusted with the universal postal service obligation within Poland. The first case (registered as PL 45/04) concerned compensation to Poczta Polska for carrying out universal postal services. The second case (registered as PL 49/04) concerned aid to Poczta Polska for investments related to the provision of universal postal services. On 29 June 2005, the Commission decided to initiate a formal investigation into the two aid schemes⁶⁵. On 27 April 2006, the Commission terminated its investigation into the investment aid because the Polish authorities withdrew their notification and the aid was never implemented⁶⁶. On 9 January 2007, the Commission partially terminated the investigation into the compensation scheme for universal services for the period 2004-2005 seeing as the aid was never implemented⁶⁷. It is continuing the procedure for the period from 1 January 2006 onwards.

During its investigations of the two aforementioned schemes, it became apparent to the Commission that Poczta Polska benefited from a pre-existing legal status, which prevented it from going bankrupt⁶⁸. By way of an Article 17 letter⁶⁹, sent on 10 May 2005, the Commission informed Poland about its preliminary conclusion that the legal status of Poczta Polska under the applicable Polish legislation amounted to an existing aid in the form of an unlimited State guarantee⁷⁰. A State guarantee of unlimited duration and amount covering

⁶³ Case T-88/07, *Fabryka Samochodów Osobowych v. Commission*, application filed on 22 March 2007.

⁶⁴ Kuik K., “State Aid ...”, op. cit.

⁶⁵ OJ [2005] C 274/14

⁶⁶ OJ [2006] C 223/11.

⁶⁷ OJ [2007] C 33/9.

⁶⁸ Case C-12/2005 – Unlimited State guarantee in favour of Poczta Polska.

⁶⁹ Article 17 of the Council Regulation (EC) 659/1999.

⁷⁰ The Commission referred to point 2.1.3 of the Commission’s Guarantee Notice, which states that ‘the Commission also regards as aid in the form of a guarantee, the more favourable funding terms obtained by enterprises whose legal form rules out bankruptcy or other insolvency procedures or provides an explicit State guarantee or coverage of losses by the State’; see Commission

all liabilities of Poczta Polska provided it with an economic advantage, and thus amounted to incompatible State aid. The Polish authorities subsequently committed themselves to abolishing the unlimited State guarantee at the latest by 30 June 2008 and thus, the Commission closed the existing aid proceedings by adopting a decision proposing “appropriate measures” pursuant to Article 88(1) EC (accepted by the Member State concerned)⁷¹.

The Poczta Polska cases should be viewed in the context of the Commission’s overall aim, which is to ensure that postal operators and their subsidiaries do not enjoy undue advantages, which could negate the effects of the ongoing liberalisation process of the postal sector. This involved assessing the compatibility of compensations granted to postal operators for providing services of general economic interest, as well as examining, whether postal operators were enjoying other advantages (such as unlimited State guarantees which result in lower financing costs). Thus, in addition to the Poczta Polska cases, on 29 November 2007, the Commission targeted France’s La Poste⁷² and, on 21 February 2007, a series of funding measures taken by the United Kingdom in favour of Royal Mail⁷³.

Power Purchase Agreements (stranded costs)

Poland’s main energy sector aim in the mid-1990s was to modernise its power generation infrastructure and to ensure security of supply. To facilitate the achievement of these objectives, Poland introduced a system of long-term Power Purchase Agreements (PPAs) to incentivise power generators to invest in Poland. Under these agreements, signed between 1994 and 1998, and which would have expired between 2005 and 2027, the State-owned network operator PSE had an obligation to purchase a fixed amount of electricity at a fixed price. Their price formulae guaranteed the viability of the generators concerned for the entire duration of the agreements. The Commission considered that such conditions created a barrier to a proper liberalisation of the power generation sector in Poland (the PPAs related to approximately 50% of the electricity generated and sold in Poland).

Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ [2000] C 71/14.

⁷¹ OJ [2007] C 284/2007.

⁷² Case C-56/2007 (ex E 15/2005) – Garantie illimitée de l’Etat en faveur de La Poste. The Commission also examined public aid to finance La Poste’s pension scheme and, on 10 October 2007, gave a conditional authorisation for public aid to finance La Poste’s pensions for civil servants (see case C 43/2006 – Projet de réforme du financement des retraites des fonctionnaires de La Poste française).

⁷³ Case C-7/2007 (ex NN 82/2006 and NN 83/2006) – Alleged aid in favour of Royal Mail, OJ [2007] C 91/34.

On 1 March 2005, Poland notified to the Commission a Draft Law⁷⁴ that would allow generators to cancel their PPAs voluntarily and obtain in return a compensation covering stranded costs (i.e. costs which arise from the cancellation of long-term agreements that cannot be recouped by the generator). On 23 November 2005, the Commission launched a formal investigation into the Polish PPAs and the Draft Law. It considered that the PPAs constituted incompatible State aid as they foreclosed a significant part of the market and provided certain generators with a selective advantage over other power generators or other comparable sectors where no such long-term agreements were even proposed. Moreover, the Commission also initially considered that the compensation for the cancellation of PPAs under the Draft Law would not fulfil the conditions set out in the Commission's methodology for analysing State aid linked to stranded costs⁷⁵ and would, therefore, constitute incompatible State aid.

On 25 September 2007, the Commission decided to order the termination of the PPAs. Pursuant to this decision, the agreements on the annulment of the PPAs should have been concluded by 1 January 2008 and become effective on 1 April 2008 at the latest, in line with the Draft Law. In the same decision the Commission approved however the compensation included in the Draft Law for stranded costs, for those generators, which benefited from the PPAs, on the basis of the Commission's stranded costs methodology. The compensation system was deemed compatible with EC State aid rules as the compensation would not exceed what was necessary to recoup the shortfall in investment costs repayment over the assets' lifetime including, where necessary, a reasonable profit margin. A similar State aid procedure into PPAs covering around 80% of the power generation market in Hungary ended on 4 June 2008 with a negative decision and recovery⁷⁶.

The Commission decision launching a formal investigation into the Polish PPAs was appealed and brought before the CFI by Elektrociepłownia "Zielona Góra" (part of the Electricite de France Group) on 12 May 2006⁷⁷. Following the adoption of the Commission's final decision on 25 September 2007, the

⁷⁴ Poland also notified an earlier version of the draft law as part of the 'interim mechanism' (PL 1/2003 – Polish stranded costs). The Commission objected and the law has never been adopted.

⁷⁵ The methodology implemented by the Commission to assess the stranded costs compensation scheme uses criteria, which ensure that the aid compensates costs genuinely incurred by the recipient companies and directly linked to the liberalisation of the sector; see Commission Communication relating to the methodology for analysing State aid linked to stranded costs adopted on 26 July 2006 (the 'Stranded Cost Methodology'), available at http://ec.europa.eu/comm/competition/state_aid/legislation/stranded_costs_en.pdf.

⁷⁶ Case C-41/2005 (ex NN 49/2005) – Hungarian stranded costs.

⁷⁷ Case T-142/06, Elektrociepłownia "Zielona Gora" v. Commission.

application was eventually withdrawn and removed from the court register on 14 April 2008.

IV. Regulatory

A. Article 7 veto decisions

Article 7 of the Electronic Communications Framework Directive 2002/21/EC (the Framework Directive) requires national regulatory authorities (NRAs), in consultation with the industry, to analyse their national markets for electronic communications and propose suitable measures to deal with market failures. NRAs should notify their findings and their proposed measures to the Commission and other NRAs. The aim of the procedure is to enable NRAs to assess whether any companies in the electronic communications market have significant market power (SMP) and, where companies are found to have SMP, to propose appropriate remedies to prevent such companies from impeding effective competition.

The Commission normally approves or comments on measures within a one-month Phase I procedure. If it concludes that the proposed measure is likely to create a barrier to the Single Market or has serious doubts about its compatibility with EU law, it will open a Phase II investigation and can then require a NRA to withdraw a proposed measure by imposing a veto. In relation to Poland, the Commission has used this veto power in a case concerning the Polish NRA's analysis of the retail markets for access to the public telephone network at a fixed location in Poland⁷⁸. On 10 January 2007, the Commission adopted its fifth veto decision⁷⁹ under Article 7(4) of the Framework Directive. The Commission had serious doubts about the market definition proposed by the Polish regulator, which included broadband connections (such as DSL connections) in the same product market as narrowband connections. Under the proposed measures, broadband connections would be made subject to the same retail regulation as other (PSTN and ISDN) connections. In its revised analysis following the Commission's veto, the Polish NRA still partially included retail broadband access in the relevant market, which resulted in a further letter from the Commission expressing serious doubts. In April 2007, the Polish NRA decided to change its market definition by removing all retail broadband services from the scope of the product market definition, and the measures could finally be adopted.

⁷⁸ Cases PL/2006/0518 and PL/2006/0524.

⁷⁹ In seven cases, moreover, there were numerous cases where NRAs have withdrawn their own measures to avoid a veto decision.

B. Other procedures

The Commission opened ten separate infringement proceedings against Poland concerning the telecoms sector; these cases are listed in Table C below. By the end of 2007, five cases have been closed as Poland adopted required measures (in two of these cases, the Commission had to launch court actions before the European Court of Justice)⁸⁰. In 2007, two court proceedings were pending against Poland (listed in Table A below)⁸¹. In two cases, the Commission's administrative procedure is currently ongoing⁸².

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⁸⁰ Cases 2005/2207, 2005/2063, 2005/2062 and 2004/1244, 2004/1251, 2004/1256. The Commission has referred case 2005/2207 to the ECJ before Poland complied with EC law.

⁸¹ Cases C-492/07 (following the infringement procedure 2005/2060) and C-227/07 (following the infringement procedure 2005/2061).

⁸² As of 20 October 2008; cases 2005/2291 (reasoned opinion) and 2007/2430 (letter of formal notice).

Table A
European Court of Justice cases

Case no.	Parties	Area	Subject	Application	Status	Decision date
1	C-492/07 Commission v Poland	Industrial policy/ telecoms	Infringement/ Subscriber definition	2007-11-07	Pending	
2	C-227/07 Commission v Poland	Industrial policy/ telecoms	Infringement/ Interconnection negotiation obligation	2007-05-08	Opinion of AG Colomer on 2008-06-10	
3	C-416/06 Commission v Poland	Industrial policy/ telecoms	Infringement/ Directory enquiry service	2006-10-11	Removed from register	2008-06-10

Source: Community Courts' website.

Table B
Court of First Instance cases

Case no.	Parties	Area	Subject	Application	Status	Decision date
1	Salej and Technologie Buczek v Commission	State aid	Restructuring aid/Steel	2007-12-20	Pending	
2	Huta Buczek v Commission	State aid	Restructuring aid/Steel		Dismissed	2008-03-14
3	Huta Buczek v Commission	State aid	Restructuring aid/Steel	2007-12-05	Pending	
4	Fabryka Samochodów Osobowych v Commission	State aid	Restructuring aid/Steel	2007-03-22	Pending	
5	Trade-Stomil v Commission	Competition/ Cartels	Cartel appeal	2007-02-19	Pending	
6	Majątek Hutniczy v Commission	State aid	Restructuring aid/Steel	2006-10-17	Pending	
7	Operator ARP v Commission	State aid	Restructuring aid/Steel	2006-10-18	Pending	
9	Huta 'Częstochowa' v Commission	State aid	Restructuring aid/Steel		Dismissed	2006-12-11
9	Huta 'Częstochowa' v Commission	State aid	Restructuring aid/Steel	2006-10-18	Pending	
10	ISD Polska and Industrial Union of Donbass v Commission	State aid	Restructuring aid/Steel	2006-09-11	Pending	
11	Elektrociepłownia "Zielona Góra" v Commission	State aid	Stranded costs/ Power purchase agreements	2006-05-12	Removed from register	2008-04-14
12	Poland v Commission	Competition	Merger appeal	2006-02-06	Removed from register	2008-04-10
13	T-191/98, Atlantic Container Line and Others v Commission (Polskie Linie Oceaniczne)	Competition	Cartel appeal	1998-12-07	Partial annulment	2003-09-30

Source: Community Courts' website.

Table C
Infringement cases

Case no.	DG	Subject matter	Latest action	Date	Closed
1	2007/2102	INFSO Broadband retail regulation	Court referral	2008-09-18	
2	2006/2506	INFSO Non-availability of caller location information for 112	Court referral	2007-11-28	2008-02-29
3	2006/2505	INFSO Independence and impartiality of the NRA	Court referral	2008-01-31	
4	2005/2291	INFSO Failure to carry out market reviews	Reasoned opinion	2006-04-04	
5	2005/2207	INFSO Lack of comprehensive directories of subscribers	Court referral	2006-06-28	2008-02-28
6	2005/2063	INFSO 112 emergency number	Reasoned opinion	2005-07-05	2005-12-13
7	2005/2062	INFSO Number portability	Reasoned opinion	2005-07-05	2006-10-12
8	2005/2061	INFSO Non-conformity with the Access Directive	Court referral	2006-12-12	
9	2005/2060	INFSO Non-conformity with the Framework Directive	Court referral	2007-06-27	
10	2004/1244 2004/1251 2004/1256	COMP Non-conformity with the Transparency Directive 80/723/EEC	Letter of formal notice	2006-04-04	2007-01-24

Source: Commission's infringement website.

Table D
Formal investigations in Polish new and existing aid cases

Case no.	Beneficiary	Type	Objective	Launch / Proposal	Decision	Date
1	C 48/2007 Huta Jedność	Individual	R&R	2007-10-23	Pending	
2	C 43/2007 Huta Stalowa Wola	Individual	R&R	2007-10-10	Pending	
3	C 34/2007 Maritime transport	Scheme	Other	2007-09-12	Pending	
4	C 6/2007 Techmatrans	Individual	R&R	2007-02-21	Positive	2007-11-28
5	C 55/2006 Bison-Bial	Individual	R&R	2006-12-20	Conditional	2007-09-12
6	C 52/2006 Odlewnia Żeliwa Śrem	Individual	R&R	2006-12-06	Pending	
7	C 51/2006 Arcelor Huta Warszawa	Individual	R&R	2006-12-06	Negative with recovery	2007-12-11
8	C 32/2006 Huta Cynku Miasteczko S.	Individual	R&R	2006-07-18	No aid	2007-09-25
9	C 23/2006 Technologie Buczek	Individual	R&R	2006-06-07	Negative with recovery	2007-10-23
10	C 49/2005 Chemobudowa Kraków	Individual	R&R	2005-12-21	Withdrawn	2006-09-26
11	C 44/2005 Huta Stalowa Wola	Individual	R&R	2005-11-23	Positive	2006-12-20
12	C 43/2005 Stranded costs	Individual	Other	2005-11-23	Mixed: positive and negative	2007-09-25
13	C 22/2005 Poczta Polska	Scheme	Other	2005-06-29	Withdrawn	2006-04-25
14	C 21/2005 Poczta Polska	Individual	Other	2005-06-29	Termination (non-implementation of aid)	2007-01-09
15	C 19/2005 Stocznia Szczecińska Nowa	Individual	R&R	2005-06-01	Pending	
16	C 18/2005 Stocznia Gdańska	Individual	R&R	2005-06-01	Pending	
17	C 17/2005 Stocznia Gdynia	Individual	R&R	2005-06-01	Pending	
18	E 12/2005 Poczta Polska	Existing / Individual	Other	2005-04-29	Abolition	2007-04-24
19	C 3/2005 Daewoo / FSO	Individual	R&R	2005-01-19	Conditional	2006-12-20
20	C 20/2004 Huta Częstochowa	Individual	R&R	2004-05-19	Mixed: negative, no aid and positive	2005-07-05

Source : State Aid Register (DG Competition).

Table E**Antitrust and merger cases**

Case no.	Party/ies	Type	Industry	Filed/opened	Decision	Date
1	COMP/M.4950 Aviva/Bank Zachodni	Merger	Financial services	2007-12-20	Unconditional approval in Phase I	2008-02-05
2	COMP/M.4552 Carrefour/Ahold Polska	Merger	Retail	2007-02-16	Full referral	2007-04-10
3	COMP/M.4348 PKN/Mazeikiu	Merger	Petrochemicals	2006-09-29	Unconditional approval in Phase I	2006-11-07
4	COMP/M.4141 Linde/BOC	Merger	Industrial gases	2006-04-06	Conditional approval in Phase I	2006-06-06
5	COMP/M.3894 Unicredito/HVB	Merger	Financial services	2005-09-13	Unconditional approval in Phase I	2005-10-18
6	COMP/38.638 Butadiene Rubber/Emulsion Styrene Butadiene Rubber (Trade-Stomil)	Cartel	Chemicals	2005-06-07	Cartel infringement/fine	2006-11-29
7	COMP/M.3543 PKN Orlen/Unipetrol	Merger	Petrochemicals	2005-03-11	Unconditional approval in Phase I	2005-04-20

Source: DG Competition's website.

Table F**Regulatory (Article 7) proceedings in telecoms cases**

Case no.	Sector	Legal basis	Decision	Date
1	PL/2006/0518 Electronic communications	Article 7(4) of Directive 2002/21/EC	Retail access to the public telephone network at a fixed location for residential customers	2007-01-10
	PL/2006/0524		Retail access to the public telephone network at a fixed location for non-residential customers in Poland	

Source: DG Information Society's website.