

Competition in the capital part of the pension scheme in Poland

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Abstract: The oligopolistic structure of the open pension funds in Poland implies homogeneity of their behaviors on the market. In particular, it influences low competitive pressure between the funds. This Article draws attention to poor competitiveness of the funds, both in the area of price competition, and quality competition. Undoubtedly, besides from the market structure, also statutory regulations, especially investment limits had impact on this situation. One may not claim, though, that statutory regulations completely eliminated the possibility of competition between the funds. The purpose of this paper is to analyze the areas of competition between the funds and the possibility of increasing competitive pressure between them.

Keywords: open pension funds, competition on the OFEs' market, oligopoly, pension system, OFEs' investment policy

JEL codes: L44, J53, G23, K21, J0

1. Introduction

OFEs' (Open Pension Funds) activities are regulated by the State, which is driven by the necessity to ensure safety of the pension scheme. Throughout a significant amount of time (up until February 2014), restrictive investment limits and limits set on the fees collected from the funds' members, strongly influenced the homogeneity of their price and investment policies. As a result, they strongly limited price and quality competition on the funds market. One must highlight, though, that the statutory provisions did not completely exclude the possibility of rivalry between the OFEs. The homogeneity of their behaviors on the funds market was also, undoubtedly, conditioned by the oligopolistic structure of the market. The purpose of this Article is an analysis of the possibilities and areas of competition between the funds on the price and

quality level, as well as verification, whether the lack of competitive pressure produces effects which need to be assessed based on the parameters of anti-trust policy. The analysis covers the period up until February 2014, but the most recent funds reform was also taken into consideration in this Article, together with its potential influence on the shape of the OFE market from the point of view of the competition between the funds.

2. The structure of the pension insurance scheme in Poland

The purpose of the pension insurance scheme (pension scheme), is to provide for its members means of subsistence for the period of their old age. These include other means than remuneration from work paid to people in the post-working age (Muszalski, 2004:174). From the point of view of an individual participant, a pension scheme is also a form of allocating his income (Antonów, 2003: 17-19). Therefore, those solutions are to create a safe and effective – in economic terms – savings system for the old age. Participation in the scheme is obligatory, which is justified by the necessity to provide necessary retirement income substituting, to a certain degree, income from work obtained before.

Up until December 31, 1998, the pension scheme functioning in Poland had a pay-as-you-go character (Kalina-Prasznic, 2012:137-147). It was based on the assumption that professionally active people financed the benefits paid (e.g. retirement or invalidity pensions) to the beneficiaries of the pension scheme. This model was based on the so-called intergenerational contract – a generation of working people enabled the financing of benefits for that part of the society which did not work anymore. The amount of the benefits paid out was not directly connected with the amount of the contributions paid in, but it was based on a strictly set formula.

Imperfection of this system as well as a considerable financial burden on the public finances, forced the reform, as a result of which a dual pension scheme was created. The scheme was based on a pay-as-you-go system accompanied by a capital system. The pay-as-you-go system was created under the 1st pillar and was represented by ZUS (Social Insurance Institution), while the capital system was the 2nd pillar and consisted of private pension funds (OFEs). The future pensioner will receive his future pension from both of these sources. Of course, he may also receive his pension from the 3rd pillar. The former is optional, though, so there is no obligation to participate in it and it functions without the State guarantee (Jędrasik-

Jankowska, 2012: 33).

The capital part of the pension system (funded system, or fully-funded system) is based on means gathered by the insured during their work activity period. These means are invested until a given person reaches the required retirement age, and then paid out as a pension. This pension comes from actual capital collected by the insured person by way of paying his contributions. Such systems may be managed by the state or by private institutions (Rutecka, 2014: 58).

The new, dual retirement scheme was, among others, to prevent encumbrance of public finances, because the contributions collected in the pay-as-you-go system were not sufficient to cover the means necessary to be paid out as pensions. Meanwhile, in practice, it turned out that not only did it not prevent problems in public finances, but it actually exacerbated them. The consequence of introducing the so-called 2nd pillar was rapidly growing public finance deficit, which forced another reform implemented in February 2014. As a result, the capital part of the system was limited due to a transfer of a large amount of funds gathered by the OFEs to ZUS and by prohibiting OFEs any investments in government bonds or other securities issued by the State Treasury. Consequently, in February 2014, open pension funds transferred to ZUS PLN 153.15 billion, decreasing the public debt by circa 6%.

Changes implemented with the last reform should stimulate the increase of competition between the funds. These will be described in the further part of the Article. It should be noted here, that up until February 2014 the funds practically did not compete against each other, which, in a way, resulted from the conditions of their activities imposed by the state.

3. The conditions of competition between the open pension funds

The construction of the pension system, as well as the legal conditions of the funds' activities, including restrictive limitations regarding their investment activities, influenced the system's shape and weakened any competitive pressure between the funds. Before we move to describing the situation of the competition between the funds, let us present the structure of the OFE market and the investment limits.

3.1. The structure of the OFE market

Undoubtedly, the OFE market has an oligopolistic character, which is confirmed by:

- a limited number of operators on the supply side (currently 13 operators),
- high entry barriers (both legal and capital),
- homogeneity of products,
- homogeneity of investment policies,
- high level of concentration of the funds market – the HHI index (Herfindahl-Hirschman index) for the years 2006-2013 was between 1450-1620 (Report KNF, 2007: 15; Annual Report KNF, 2013: 25).
- similar market position of some funds – in 2013 the largest of them (ING Nationale Nederlanden Polska OFE, Aviva OFE Aviva BZ WBK, OFE PZU "Złota jesień" and Amplico OFE) had joint market share of 67.8%(Sprawozdanie z działalności KNF, 2013:25), and at the same time concentrated over 70% net income (Jakubowski et al,2014: 234),
- stability of labor market – which is confirmed by the market share in terms of the amount of net income in the years 2006-2013 (Table 1).

Table 1: Market share of the four largest funds in terms of the amount of net assets in the years 2006-2013

Year	Four largest Open Pension Funds	Market share measured by the amount of net assets [%]
2006	Commercial Union OFE BPH CU WBK, ING Nationale Nederlanden Polska OFE, OFE PZU “Złota Jesień”, AIG OFE	71.9
2007	Commercial Union OFE BPH CU WBK, ING Nationale Nederlanden Polska OFE, OFE PZU “Złota Jesień”, AIG OFE	72.1
2008	Commercial Union OFE BPH CU WBK, ING Nationale Nederlanden Polska OFE, OFE PZU “Złota Jesień”, AIG OFE	71.8
2009	Aviva OFE Aviva BZ WBK, ING Nationale-Nederlanden Polska OFE, OFE PZU “Złota Jesień”, Amplico OFE	71
2010	ING Nationale-Nederlanden Polska OFE, Aviva OFE Aviva BZ WBK, OFE PZU “Złota Jesień”, Amplico OFE	69.4
2011	ING Nationale-Nederlanden Polska OFE, Aviva OFE Aviva BZ WBK, OFE PZU “Złota Jesień”, Amplico OFE	67.9
2012	ING Nationale-Nederlanden Polska OFE, Aviva OFE Aviva BZ WBK, OFE PZU “Złota Jesień”, Amplico OFE	67.8
2013	ING Nationale-Nederlanden Polska OFE, Aviva OFE Aviva BZ WBK, OFE PZU “Złota Jesień”, Amplico OFE	67.8

Source: Author’s own elaboration based on Polish Financial Supervision Authority (2006, 2007, 2008, 2009, 2010, 2011, 2012).

3.2. Oligopolistic behavior and the risk of restriction of competition in the light of anti-trust provisions

In the light of the theory of oligopoly, the risk of collusion results from the very own structure of the market. Strategic activities between a small number of entrepreneurs who can influence the market, but who are not able to take effective competitive actions without taking into account the behaviors of their competitors, are the symptom of oligopolistic behaviors. Yet, they differ in terms of the method of considering their rivals competitive activities. Such behaviors may affect the rules of competition, although not every parallel behavior of individual entrepreneurs will be

subject to the ban on cartels. Parallel behaviors of entrepreneurs as such will be an undesired result of an oligopoly, but will not stand for mutually agreed behaviors in the meaning of Art. 101 TFEU (containing the ban on cartels). Parallel behaviors do not have to lead to the coordination of the oligopolists' market behavior. Art. 101 TFEU ensures each entrepreneur the right to adjust to the current or expected behaviors of his competitors in an intelligent manner (ECJ judgment of 16.12.1975 on 114/73 *Suker Unie*: pt. 40-48, 50, 54-56, 111, 113). From the point of view of Art. 101 TFEU, the determining factor is whether the form of the collusion can be considered an independent, parallel behavior, or not (ECJ judgment of 06.01.2004 on C-2/01 P and C-3/01 P *Bundesverband der Arzneimittel-Importeure (Adalat)*, p. I-23, pt. 102). Uniformity of behaviors may also result, in the meaning of Art. 101 TFEU, from normal and allowed competitive behaviors, when entrepreneurs adjust their price policy to the market leader, or it results from the very oligopolistic system of reaction.

EU's legal order condemns restricting competition in indirect or direct way, but only under the condition that these will be coordinated with the activities of another entrepreneur. These are banned if they only result in restricting competition.

The criteria of coordination in the light of the provisions of the competition law contained in TFEU are completely understandable. Each entrepreneur may decide on his own what his policy on the market shall be and what conditions he will offer to his clients. Therefore, any indirect or direct contact between entrepreneurs is prohibited when it is equal either with actual market behaviors or may influence potential competitors from the point of view of coordinating market behaviors. The purpose of the exchange of information between competitors is to remove any doubts as to the future competitive behaviors and it is a standard tool of coordination of behaviors (ECJ judgment of 16.12.1975 on 114/73 *Suker Unie*, ECR 1975, p. 1663, pt. 40-48, 50, 54-56, 111 and 113). The subject of the agreements must be the future behavior of the participants of the oligopoly. It may influence competitive relationships. Speaking of Art. 101 p. 1, one must distinguish between a couple of elements of an analysis: first of all, there must be an instance of competition distortion, i.e. a coordinated behavior. Secondly, its aim or result must be restriction of competition, which significantly affects third parties. And thirdly, it must limit trade between member states. Most importantly, the relationship between the first two elements of the research is crucial for the differentiation between the ban on cartels and allowed behaviors in oligopoly.

The conditions of the pension funds' activities favor collusion. One may not claim, though, that they violate anti-trust regulations. In fact, one may claim, that legal regulations in a vast extent influenced the lack of competitive pressure on the OFE market. This lack is not solely the consequence of the oligopolistic market structure. It results primarily from the provisions regulating the level of contributions collected by the funds and investment limits.

3.3. Limits to the OFEs' investment activities

The possibilities and the degree of competitiveness between the funds are in a certain degree also restricted by the limits regarding their investment activities. Investment limits described in the Regulation of the Council of Ministers of April 26, 2011 contain the upper limits of investments in certain assets (Regulation of the Council of Ministers of 26.04.2011). (Table 2).

Table 2. OFEs' investment limits

OFE's investment limit [in %]	Financial assets subject to the limit
5	Assets dematerialized according to the Act on Trading in Financial Instruments, uncovered bank bonds and other debt securities the issuer of which is a non-public company.
10	Shares of on- and off-exchange companies, rights to shares and convertible bonds
	Bonds other than dematerialized of any subjects other than local government units
	Depository receipts admitted to trading on the Polish market
	Investment in uncovered bonds and other debt securities of public companies
15	Investments in units of the open investment funds
20	Bank deposits and bank securities
	Bonds and other municipal securities
	Income bonds in the meaning of Bond Law
40	Bonds other than municipal, backed in the full amount
	Mortgage bonds, but no more than 15% in mortgage bonds other than dematerialized
90	Stock exchange shares and bonds convertible into shares of these companies and NFI (National Investment Fund) shares, but up to 7.5% in the case of not listed companies

Source: Author's own elaboration based on Polish Council of Ministers (2011).

Up until 2014, OFEs had the freedom of investment in the Treasury bills and bonds (Treasury bonds comprised 60% of the OFEs' portfolios) and securities issued by the National Bank of

Poland. In 2013 the structure of the OFEs' investment portfolio comprised bonds (51.93%), shares of companies listed on the regulated stock-exchange market (41.67%), bank deposits and bank securities (5.90), Treasury bonds, NFI shares and other investments (0.49) (Table 3) (Jakubowski et al, 2014: 240).

Table 2: Structure of the OFEs' investment portfolio in 2012 & 2013

Investment	2012 [in %]	2013 [in %]
Bonds	55.97	51.93
Shares of companies listed on the regulated stock-exchange market	34.86	41.67
Bank deposits and bank securities	8.13	5.90
Treasury bonds	0.13	no data available
NFI shares	0.18	no data available
Other investment	0.73	0.49

Source: Author's own elaboration based on Polish Financial Supervision Authority (2013).

Changes introduced in the current year included the prohibition of purchasing by the funds of Treasury financial instruments, but at the same time they allowed the possibility to invest in the shares of companies listed on the regulated market of the Warsaw Stock Exchange. The funds are prohibited from investing their assets in bonds and other securities issued by the State Treasury, the government, or the central banks of the Member States of the EU and EEA. This prohibition includes investment in immovables, raw materials, CO2 emission limits, shares in limited liability companies or securities issued by pension fund companies; securities of a shareholder of a pension fund or any entities related to the pension fund or its shareholders (Jakubowski et al, 2014: 239-240).

On the one hand, the most recent reform is to force the increase in competition between the funds, but on the other hand, it is to allow the financing of the companies listed on the regulated market of WSE. It must be highlighted here, that the previous limits restricted in a great degree both price and quality competition.

4. Price competition

Price competition of the funds is practically limited to two parameters. These are distribution and management fees. The distribution fee depends on the amount of the contribution paid by the

member of the fund. Its upper limit was set by the State at 7%. Until 2010, most of the funds established this fee on this maximum level. The structure of fees owed to the particular funds varied only when considering the membership premium, which fact made it more difficult to compare them quickly and synthetically. (For example, OFE Bankowy offered not to collect it after 25 years of membership). In 2010, the role of the fees from contributions as a factor stimulating competition between the funds was limited even further. It was reduced from 7% to 3.5%. At that time, all funds except from OFE Polsat and OFE Allianz maintained it at the maximum level (3.5%). Yet, those two funds established the distribution fee at a level very close to the maximum. For OFE Polsat it amounted to 3.40%, and for OFE Allianz – 3.45% (Chybalski, 2012: 251). Currently (i.e. from February 2014), the maximum level of this fee is 1.75%. This change had a rather small influence on the situation of the funds. Most likely, lowering the upper limit of the distribution fee by half will cause further maintenance of correlation between the funds. The experiences so far show that the lack of motivation to use it as a tool of competition resulted, partially, from the fact that the customers weren't really alert to price. Research show, that price changes in particular funds had no connection with gaining new clients.

The second element of the price competition was the management fee, which has influence on the amount of the capital collected by the fund. Therefore, the funds maximized the level of this fee. Most likely, this fact resulted from the assumption of a limited degree of analysis of economic factors (such as the level of prices in the particular funds) by potential members. This element of price competition was also used for rivalry between the funds. They would rather try to win new clients by strengthening their doorstep sales activities, than highlight the differences in the level of this fee (Report KNF, 2007: 34). One must highlight, though, that the establishment of the upper limit of the fees collected by OFEs should not influence in such a great degree the harmonization of their price policies. This allows us to claim, that price competition between the funds is relatively limited, which fact favors homogeneity of their market behaviors. The situation is similar in terms of quality competition.

5. Quality competition

The core of quality competition focuses on the investment results of the funds. As it was pointed out before, in the described period the State introduced numerous limits as regards the possibility of their investment activities. These included mainly investment limitations and maximum share in the securities of a given issuer. As a result, the structures of the investment portfolios of the funds were very similar (Chybalski et al, 2009: 121-134). Yet, the limitations did not rule out the differentiation of the investment portfolios of the funds. The portfolio of the pension funds is an intermediate structure of sustainable growth funds (with a typical conservative model of investing) combined with balanced funds, investing mostly in shares (Banaszczak-Soroka, 2010: 10-11).

The limitations described in p. 2.3. do not allow us to claim that the State completely eliminated the possibility of competition between the funds (Dybał, 2008: 62-82). They can still run a differentiated investment policy within the allowed limits. From the point of view of the members (actual and potential), financial results of a fund should determine the level of their migration between the OFEs. Theoretically, they should have a larger influence on the choices of the insured than the parameters of price competition (i.e. the level of distribution and management fees). In practice, though, it turns out that the members of the funds do not perform an analysis of the funds' investment policies. They only assess the rate of return of the given fund as compared to the rest, but do not analyze in detail the fund's investment policy. This confirms the lack of convergence between the rate of return of a fund and the growth of the number of new members or limiting the migration from the fund. Such behavior of the fund members may, to some degree, justify the lack of relation between the current and future rate of return. In fact, the decisions of joining or changing a fund (mobility of the funds' members) was for a long period of time conditioned by the activities of door-to-door salesmen, professionally engaged in attracting new customers. Yet, doorstep sales activities were banned.

The above observations induce a conclusion that the only parameter allowing to determine that competition between the funds, although in a very limited degree, actually exists, is the rate of return (Dybał, 2008: 62-82). This thesis is confirmed, among others, by the level of the average three-year rate of return achieved in the period between March 31, 2011 and March 31, 2014 by particular funds. The difference between the highest and the lowest rate of return achieved in the period of 3.31.2011 - 3.31.2014 by particular funds was 6.8%. The three-year rate

of return of Nordea OFE was 24.27%; Amplico OFE 22.29%; ING OFE 21.78%; Allianz Polska OFE 21.21%; PKO BP Bankowy OFE 21.21%; OFE Warta 20.34%; Aviva OFE Aviva BZ WBK 19.94%; AXA OFE 19.61%; OFE PZU “Złota Jesień” 19.61%; Generali OFE 19.45%; Pekao OFE 18.70%; AEGON OFE 18.68%; OFE Pocztylion 17.52% (Report, UKNF 2014: 24).

A significant barrier for differentiation of the investment policy and, as a result, the rate of return was the requirement to achieve the minimal rate of return binding until February 1, 2014 (Szpor, 2013: 173-174). Undoubtedly, it had an influence on the weakening of quality competition. The smaller funds started to model their investment policy inspired by the larger funds. Copying larger funds limited the risk of mistakes and, at the same time, increased the probability of achieving the minimal rate of return. Although there was freedom of constructing the investment portfolio, but the necessity to ensure the guaranteed rate of return on a certain minimal level did not favor it. The main factor motivating the funds to increase competitive pressure and maximize the rate of return turned out to be legal regulations forcing effective investment activities. The level of the three-year rate of return announced by the Polish Financial Supervision Authority (UKNF) significantly affected the incomes of the funds and the distribution of bonus accounts. Pension Fund Companies (PTE) had the possibility to withdraw the means gathered on the bonus account and transfer them to a reserve account, depending on the rate of return achieved by the OFE they managed (Here the important factor is the real level, after considering inflation). The means from the reserve account could then be transferred to the Pension Fund Company and used as bonuses for the results in the fund's investment activities. There was only one condition limiting such possibility: the rate of return from the last 6 years could not be lower than the inflation rate for this period, as published by the Central Statistical Office (Annual UKNF Report, 2013: 25).

The growth of competition between the funds could be strengthened by factors stimulating the flow of members between them, but these were never implemented. The current situation of OFEs (after the reform of February 2014) allows us to expect increase of competitive pressure between the funds. Abolition of the obligation to participate in OFEs favors it most importantly of all. This fact caused the loss of ca. 85% by the funds. The sole fact of the freedom of choice of the allocation of contributions (OFE or ZUS), therefore no obligation to participate in an OFE, should favor the increase of competitive pressure between the funds. It must be highlighted, that the funds had limited possibility to invest in Treasury debt instruments and

instruments the issuer of which was the State Treasury. It should influence the growth of competition between the funds. In the year 2013 OFEs are obliged to maintain at least 75% of assets in shares. This limit will be lowered in the following years (55% in 2015, 35% in 2016 and 15% in 2017). Complete freedom will take place in 2018. Restricting the investment limits is supposed to be a tool to activate investment effectiveness of the funds. Transformation of funds into stock companies should favor this. The investment portfolio of OFEs currently consists solely of non-State securities. In 2014 also the mechanism of minimal required rate of return was abolished, together with the institution of deficiency. Another thing to be introduced at that time was the possibility to maintain up to 30% of assets in securities denominated in other currencies, i.e. in Euro and the currencies of the EEA countries, as well as the OECD member states. This limit shall be reached gradually. In 2014 it equals 10%, in 2015 it will equal 20%, and in 2016 it will reach 30%. It is also a factor enabling the growth of competition between the funds, although it stimulates the maintenance of OFEs' dual character (Jakubowski, 2013: 124-130). Undoubtedly, the regulations introduced in 2014 favor the increase of competitive pressure between the funds, yet the loss of a significant number of members (from about 16 million to about 2.5 million) will force further consolidation periods, which may lead to parallel behaviors of the funds. Therefore, there is a risk, that the changes introduced with the latest reform will not trigger competition on this market.

6. Conclusion

To sum up, one must highlight that in the described period the funds did not take up competition in all possible areas. As it was shown before, they did not compete either in price, or quality terms. The lack of competition was noticeable both in the aspect of management fee, as well as the distribution fee (Chybalski, 2012: 252). Funds ran a unified investment policy. The only parameter to indicate the existence of competition is the average three-year rate of return. Undoubtedly, legal regulations, especially investment restrictions, partially had an influence on limiting price and quality competition between the funds. One cannot claim, though, that these regulations completely eliminated the possibility of competition between the funds. Establishing the upper limit of the distribution fee was rather not the factor eliminating competition between the funds. There was still the possibility to differentiate its level depending on the years of

membership. It was a tool enabling in a certain (although not much) degree the development of competition between the OFEs. However, in a longer period of time, connecting a client with a fund through the possibility of lowering his contributions posed a risk of a strong connection between the client and the fund, thus weakening the degree of competition between the funds. The funds also had a certain amount of freedom in terms of constructing their investment policies. Meanwhile, in practice, they presented homogenous behaviors, which is typical for oligopolistic markets. Such behaviors were stimulated by the obligation of participation in OFEs. For these reasons, investment limits were introduced together with tools forcing funds' responsibility for their investment policy – the minimal rate of return. This, in turn, favored an even greater homogeneity of OFEs' market behaviors. A significant barrier for forcing competitive pressure between the funds was also a low tendency among the members to change the funds. Until the ban on doorstep sales was introduced, the members based their decisions regarding the selection of a fund mainly on the power of the salesman's arguments, rather than their own economic analysis. As a result, the funds presented typical oligopolistic behaviors. One may even assume, that they imitated each other's behaviors, or even claim an existence of a collusion. One may not claim, though, that their behaviors breached anti-trust regulations. The amendment to the OFE Act in 2014 forced changes in their investment profiles. Consequently, they transformed from sustainable growth funds into equity funds, which should force increase of competitive pressure between them. However, expected consolidation processes suggest that one should rather not expect dynamic growth of competitive pressure on the OFE market.

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*Konkurencja w kapitałowej części systemu emerytalnego w Polsce**Streszczenie*

Celem artykułu jest analiza uwarunkowań i obszarów konkurencji między otwartymi funduszami emerytalnymi (OFE). W artykule zwrócono uwagę na brak presji konkurencyjnej między funduszami tak w obszarze konkurencji cenowej jak i jakościowej. Niewątpliwie na taką sytuację ma wpływ oligopolistyczna struktura rynku otwartych funduszy emerytalnych w Polsce. Implikuje ona homogeniczność ich zachowań rynkowych. Ponadto do 1 lutego 2014 r. tendencję tą wzmacniały obowiązujące wówczas restrykcyjne limity inwestycyjne i regulacje dotyczące działalności OFE. Nie można jednak stwierdzić, że regulacje prawne zupełnie wyeliminowały możliwość rywalizacji między funduszami. Istotnym czynnikiem ograniczającym konkurencję między funduszami była także obligatoryjność członkostwa w OFE. W związku z reformą systemu emerytalnego wdrożoną w lutym 2014 r. został zniesiony obowiązek uczestnictwa w OFE, a fundusze uzyskały większą swobodę kreowania polityki inwestycyjnej. Jednak jest jeszcze zbyt wcześnie, aby ocenić te zmiany i ich wpływ na konkurencję między OFE. Z tego względu analiza konkurencji na rynku OFE obejmuje okres do lutego 2014 r., przy czym w artykule uwzględniono również najnowsze zmiany i ich potencjalny wpływ na kształt rynku OFE z punktu widzenia możliwości ożywienia konkurencji między funduszami.

Słowa kluczowe: otwarte fundusze emerytalne, konkurencja na rynku OFE, oligopol, system emerytalny, polityka inwestycyjna OFE



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