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The control of the banking sector concentration in Poland – legal and economic aspects. Selected issues

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ABSTRACT

The paper aims to analyse selected legal and economic issues connected with control of concentration in the banking sector in Poland. The antitrust law aims to counteract the monopolisation of the market. Undertakings, including banks, can take actions which lead to mergers or takeovers which can strengthen the market power of some of them. The antitrust authority has normative instruments to influence the market in order to counteract its monopolisation. These instruments usually concern control of the concentration of companies (also banks). In Poland, the antitrust authorities (the President of the Office of Competition and Consumer Protection – UOKiK) also have a legal instrument which can counteract the anticompetitive actions of banks.

Because of the specific features of the financial market and financial services, general characteristics of these issues are presented in the paper. Moreover, the methods of measurement and aims of control of concentration are analysed. The main legal instrument of limiting the concentration is connected with an administrative procedure. Therefore, general provisions of these procedures are also shown in the paper. To illustrate the above-mentioned theoretical issues the statistical data concerning the level of concentration in the Polish banking sector is also analysed.

Keywords: banking sector concentration, antitrust law, government policy and regulation.

1. Introduction

Competition is one of the main features of the market mechanism. Microeconomics analyses different structures of markets, such as monopolistic competition, monopoly or oligopoly. In each structure, competition plays an important role. Therefore, any imperfect competition can disturb the market mechanism. That is why the antitrust law aims to protect the market against monopolisation. The antitrust law also concerns situations in which market competition begins to disappear or change into monopoly [Kępiński, 2013]. In this case, the reason for the state's intervention on the market (e.g., connected with the consequences of the market's monopolisation) is to limit the dominant position on the market or to control entrepre-

neurs' concentration. It is also important because the consequences of de facto monopoly are negative for an effective allocation of goods. The monopoly controls, for example, the prices of goods, supply on the market or access to the market through illegal market practices [Powałowski, 2010, p. 104, Hylton, 2003, p. 30].

One type of a market is the financial market. This market is quite specific because of its essential role in the national economy, the types of entrepreneurs and the products which are financial services. Therefore, the financial market is under particular state supervision. There are two kinds of state institutions which control and oversee the financial market in Poland. The first one is the Financial Supervision Authority (hereafter referred to as KNF) which is the financial regulatory authority. The other

is the Office of Competition and Consumer Protection (hereafter referred to as UOKiK) which, among others, controls the concentration on the market, also in the banking sector, which is part of the financial market.

The entities on financial market are also specific because there are financial institutions, mainly banks, but also other institutions which provide loans, the so-called shadow banks (in Polish: „parabanki”). The products on the financial market which are financial services are specific as well. A characteristic feature of financial services is the asymmetry of the decomposition of an economic risk between parties of financial transactions. In financial transactions, consumers are the weaker party in comparison with financial institutions such as banks. That is why states should protect consumers on the financial market. One of the aims of UOKiK is to control the concentration (i.e., its market force) of the financial institutions on the financial market (also in the banking sector) in Poland. The reason for these actions is to prevent creating or strengthening the dominant market position of entrepreneurs in the banking sector. Therefore, the planned mergers or takeovers in the banking sector are under concentration control (i.e., the supervision by the President of UOKiK) and also require the consent of financial regulatory authority (KNF).

The general aim of this paper is to analyse selected legal and economic aspects of the control of concentration in the banking sector in Poland. The specific objective of the study is to find out if legal instruments of the antitrust authority in Poland are sufficient to control the concentration in the banking sector in Poland in order to counteract its monopolisation.

The antitrust authority has normative instruments to influence the market in order to counteract its monopolisation. These instruments usually concern control of concentration of companies (including banks or other financial, credit institutions, such as insurance companies). The aim of this is to limit anticompetitive actions of undertakings such as mergers or takeovers, which could lead some of them to

dominate on the market.

Because of the specific features of the financial market and financial services, general characteristics of these issues are presented in the paper. The study uses analysis of legal regulations of the Polish antitrust law and statistical data of the banking sector connected with control of concentration the sector's concentration. Therefore, the methods of measurement and aims of control of concentration are analysed. The main legal instrument of limiting the concentration is connected with an administrative procedure, and therefore general provisions of these procedures were also shown in the paper. To illustrate the above-mentioned theoretical issues, statistical data concerning the level of concentration in the Polish banking sector are also analysed.

2. The financial market and financial services – general characteristics

The financial market is one of the markets in the national economy. The financial market is defined as „total transactions concerning securities, which are the instruments of giving short-term, mid-term and long-term credits” [Niczyporuk, Talecka, 2011, p. 44]. The financial market can be divided in many ways¹. A specific feature of the financial market, which is a flow of money from suppliers to buyers, is one of the causes that this market should be under a special normative regime, especially in the field of state supervision and organisation [Kosikowski, 2010, p. 94 and subsequent]. The main aims of state regulation and supervision on the financial market are also, among others, investors and consumer protection (which should be efficient and effective)² or financial stability [Grünbichler, Darlap, 2003]. The subject of the transaction on the financial market is financial services. In Polish and European Union (hereafter abbreviated as UE) Financial Law, financial service is not defined [Rutkowska-Tomaszewska, 2014, p. 67]. There is no legal definition of financial service in the

¹ See more: M. Frańczuk, K. Gałązka, *Teoria finansów, rynek finansowy [The Theory of Finances, Financial Market]* [in:] A. Paździor (ed.), *Finanse. Funkcjonowanie, instytucje i instrumenty rynku finansowego, finanse publiczne przedsiębiorstw i gospodarstw domowych [The Finances. The Functioning, Institutions, and Instruments of Financial Markets, Public Finances of Companies and Households]*, Lublin 2014, p. 21.

² *Supervision of financial services in the OECD area*, <http://www.oecd.org/finance/financial-markets/1939320.pdf>, (accessed: 15.09.2018), p. 3, see also: J.C. Marquardt, *Financial Market Supervision: Some Conceptual Issues*, Bank for International Settlements, Economic Papers 1987, no. 19, p. 3 and subsequent; R. Hetes, A. Crășneac, A. Avram, *The Impact of the Financial Crisis on the Theory and Practise of Financial System Supervision*, Annals of the “Constantin Brâncuși” University of Târgu Jiu, Economy Series 2013, no. 2, http://www.utgjiu.ro/revista/ec/pdf/2013-02/26_Hetes%20Roxana,%20Crasneac%20Alex.pdf (access: 15.09.2018), p. 173-174;

Polish Law on Financial Market Supervision of 21 July 2006³. However, by this Act specific parts of the financial market under the supervision of KNF can be distinguished. These parts are, among others, the bank market, insurance and pension market, capital market [Nieborak, 2012, p. 573]. In consequence, usually, the financial market in Poland (in a subject aspect) is created by these three segments (i.e., the bank market, the insurance market, the capital market) [Jurkowska – Zajdler, 2010, p. 252].

Additionally, in the Polish Law on Consumers Laws of 30 May 2014⁴, the term “financial services” is not defined. However, in this Act, the examples of financial services, such as bank services, consumer’s credit agreement and insurance actions are mentioned. The regulation of this Act is not used for these types of financial services (which are established in Article 4 item 2 of this Act).

Financial services are defined in the literature as “*services provided by financial institutions, which are at the same time professional market participants of the financial market, which in the frame of an economic activity provide services to professional subjects and non-professional market participants, including consumers*” [Rutkowska-Tomaszewska, 2014, p. 68]. It should be stressed that financial services are a specific kind of services because of their financial character. The features of financial services are, among others, their intangible and complicated character.

3. Concentration in the banking sector – the methods of measurement and aims of control

In the economic literature, market concentration is defined as “*an exogenous variable of market structure, which indirectly, through enterprise conduct (possible collusive behaviour), affects the industry performance measured by the level of output, profitability, or other kinds of indicators*” [Krivka, 2016, p. 526].

Concentration is also defined as a process of consolidation of entrepreneurs as organisation units and subjects of property laws, which causes changes in the structure of the economy (relevant markets), within control and property relations [Kohutek, Sieradzka, 2014]. Therefore, the measurement of market concentration should deliver information about the

market power of individual entities. If the level of concentration is high, it may be, for example, a sign of an entrepreneur with individual market power. Usually, markets with a high level of concentration are markets on which the entry barriers are high and permanent. On the other hand, a low level of concentration can indicate lack of market power [Kwiatkowska, 2013, p. 80]. Therefore, the measurement of market concentration is necessary to evaluate the market power of the entrepreneur and to arrange if there is market monopolisation which threatens competition [Kohutek, Sieradzka, 2014].

Economic literature shows different methods for measuring concentration on the market. One of the best-known ways of measuring market concentration is the Herfindahl-Hirschman Index, hereafter referred to as HHI [Jackowicz, Kowalewski, 2002]. The HHI is defined as the sum of the squares of market shares of companies in the total value of an examined feature [Jackowicz, Kowalewski, 2002, p. 14]. An advantage of the HHI is that it includes all entities in a given sector, not only those in which the market share is the most significant [Kwiatkowska, 2013, p. 84]. The HHI can take values to form $1/n$ (where n means the number of entities on the market) to 1 (the situation of perfect concentration of the value of a feature) [Jackowicz, Kowalewski, 2002, p. 14]. If the value of the HHI is close to zero, it indicates that the market is fragmented and there are many entities on it. On the other hand, if the value of the HHI is close to one, it shows the monopolisation of the market [Kwiatkowska, 2013, p. 84]. For example, if the HHI is 0.49, it indicates the market with the leading company with 70% of the market share. For the highest levels of concentration, the HHI is not applied. It is used mostly to oligopoly (in this case the HHI is between 0.10 to 0.25) [Rogowski, 2001, p. 44].

Other methods of measuring market concentration are concentration ratios CR n such as CR5 (the share in the assets of the banking sector of five biggest banks), CR10 (the share in the assets of the banking sector of ten biggest banks). These concentration ratios show the market share of only the biggest banks, mostly the level of monopolisation of supply in the given sector. It should be mentioned that there are also other methods of measuring market concentration, such as the Gini Concentration Index illustrated by Lorenz Curve [Rogowski, 2001, p. 44] or others [Krivka, 2016].

The concentration of entrepreneurs in many

³ Journal of Laws of 2017, item 196 as amended.

⁴ Journal of Laws of 2017, item 683 as amended.

cases may limit competition on the market. Moreover, it can destroy proper competition relationships in the economy or strengthen the dominant position of confident entrepreneurs on the market. Therefore, counteracting these negative market phenomena is the assignment of the President of UOKiK [Powałowski, 2010, p. 252].

The aims of controlling concentration in antitrust regulation are to control mergers and acquisitions in order to limit the dominant position of companies or market shares of the largest companies on the market [Krivka, 2016, p. 526]. The oligopoly market is an excellent example of the rationale of control of market concentration, especially connected with the antitrust merger control. The aim of it is to control the number of market shares of companies on the market in order to avoid the merger or acquisition of companies which would enhance monopoly power or dominance [De Leon, 2009].

The impact of concentration on competition on the market is various. In Poland, the institution which controls whether the level of concentration on the market is not anticompetitive is the President of UOKiK. One of the essential issues of concentration control is the term of the relevant market, as it is the first stage of concentration assessment. The relevant market is defined in article 4 point 9 of the Act of 16 February 2007 on Competition and Consumer Protection [Journal of Laws of 2017, item 229 as amended], hereafter referred to as u.o.k.k. as *“a market of goods, which by reason of their intended use, price and characteristics, including quality, are regarded by the buyers as substitutes, and are offered in the area in which, by reason of their nature and characteristics, the existence of market access barriers, consumer preferences, significant differences in prices and transport costs, the conditions of competition are sufficiently homogeneous”*. A relevant market is a normative form of some segment of the market in an economic sense. It investigates the market in geographic and product aspects in order to examine if the concentration of companies does not disturb the competition on the market.

There are different ways of examining the impact of concentration on competition, such as horizontal and vertical impact. For exam-

ple, the horizontal impact of concentration on competition (non-coordinated effects) boils down to *“eliminating the competitive pressure the concentration participants exercise on each other, which leads to reinforcing the position of a merged entity towards the trading partners and competitors. Therefore it is possible to raise the prices (worsen the quality)”* [UOKiK, Clarifications..., p. 26 and subsequent]. There are also coordinated effects of concentration which may appear on oligopolistic markets⁵.

The vertical impact of concentration is connected with operating on the levels of trade (when potentially the entities are suppliers and recipients for each other). There are three forms of the negative impact of concentration in vertical setting (two of them concern unilateral conduct, resulting in limiting access to the market or foreclosure, and one is connected with coordinating market behaviour) [UOKiK, Clarifications..., p. 42].

4. Proceedings connected with the control of concentration in the banking sector in Poland – general provisions

Firstly, it should be noticed that the above-mentioned Act on Competition and Consumer Protection established regulation connected with the prohibition of competition-restricting practices. The main instruments of counteracting the antitrust market behaviour of companies are restrictive competition agreements and the abuse of the dominant position.

Article 6 item 1 of u.o.k.k. contains a catalogue of antitrust practices which are forbidden (e.g., fixing, directly or indirectly, prices and other trading conditions; limiting or controlling production or sale as well as technical development or investments; dividing sale and purchase markets). Another anticompetitive market practice which is prohibited according to Article 9 item 1 of u.o.k.k. is the abuse of the dominant position on the relevant market by one or more undertakings⁶.

The above-mentioned Act of Competition and Consumer Protection entitles the President of UOKiK to conduct the administrative proceedings concerning competition restricting practices and practices infringing collective consumer interests (also using commitment decisions)⁷. There is also an administrative

⁵ See more: *Clarifications Concerning...*, p. 41.

⁶ According to Article 9 item 2 of u.o.k.k., the abuse of a dominant position may, in particular, consist: the direct or indirect imposition of unfair prices, including excessive or predatory pricing, long time limits for payment or other trading conditions; limiting production, sale or technological progress to the detriment of contracting parties or consumers.

⁷ See more: *Clarifications on Issuing the Commitment Decision in Cases of Competition Restricting Practices and Practices*

procedure connected with the control of concentration (Articles 13-23 of u.o.k.k.). The first part of this procedure is the notification of the intention of concentration (by undertakings⁸). The intent to concentrate is subject to notification submitted to the President of UOKiK, who in turn verifies if the conditions established in Article 13 para. 1 of u.o.k.k. (the criterion of turnover) are fulfilled. The President of UOKiK controls only those concentrations which cause or may cause effects in the territory of Poland [UOKiK, Guidelines..., p. 8 and subsequent].

It the Act of Competition and Consumer Protection the legal definition of concentration was not established. Nevertheless, Article 13 para. 2 of u.o.k.k. established a closed catalogue of the forms of concentration as following a combination of two or more independent undertakings, the so-called mergers (Article 13 para. 2 point 1 of u.o.k.k.) – by acquiring or taking up stocks, other securities, shares or in any other way of direct or indirect control over one or more undertakings by one or more undertakings (Article 13 para. 2 point 2 of u.o.k.k.), creation of one joint undertaking by undertakings (Article 13 para. 2 point 3 of u.o.k.k.), acquisition of a part of the assets of another undertaking (the whole or part of the enterprise) if the turnover generated by these assets in any of the two financial years preceding the notification exceeded the equivalent of EUR 10 million on the territory of Poland (Article 13 para. 2 point 4 of u.o.k.k.) [UOKiK, Guidelines..., p. 8 and subsequent].

There are also cases where the undertakings do not have to notify the intention of concentration (e.g., the concentration applies to undertakings participating in the same capital group)⁹.

The procedure of concentration leads in particular to the following decisions issued by the President of UOKiK: a decision expressing consent to the implementation of the concentration or a decision expressing the so-called conditional consent to the implementation of concentration, decision of prohibiting the implementation of concentration [UOKiK, Guidelines..., p. 43 and subsequent].

If the procedure of notification of the intention of concentration fails, undertakings must be prepared for bearing negative consequences

such as sanctions established in the Act of Competition and Consumer Protection. Usually, these are financial sanctions such as fines imposed on undertakings, fines imposed on persons performing managerial functions or being members of the undertaking's managing authority¹⁰.

There is no particular procedure for controlling concentration in the banking sector in Poland. In consequence, the President of UOKiK applies the same rules to control concentrations of banks or other non-bank entities¹¹. Because of the specific features of banks, which are financial institutions concerning participants on the financial market, also the Financial Supervision Authority must issue consent for a merger of banks. According to Article 124 para. 1 of the Act of 29 August 1997 – Banking Law¹² (hereafter referred to as pr. bank.), a bank can get through with another bank or credit institution if they receive the consent of KNF. The Financial Supervision Authority does not give the consent if this merger would violate legal regulations, interests the banks' clients or would threaten the security of the financial means gathered in this bank (Article 124 para. 2 of pr. bank.). Accordingly, a merger in the banking sector has to obey the rules of antitrust law and banking law at the same time. Banks which take part in these actions have to receive the consent of UOKiK and KNF.

5. General characteristics of the banking sector in Poland and the level of its concentration

The banking sector in Poland has features of a monopolistic structure. It means that it has features of two market models: perfect competition and monopoly [Rogowski, Lipski, p. 48]. On the market, there are a large number of participants, but they offer different services. Therefore, products (services) are diversified. In consequence, each bank does not have monopolistic power because of offered (financial) products. Moreover, participants who offer similar services have freedom of entry and exit to branches (of the market) [Rogowski, Lipski, p. 48]. In banking sector the increase of con-

Infringing Collective Consumer Interests, UOKiK, <https://uokik.gov.pl/download.php?plik=12177> [accessed on 8 February 2018], p. 1 and subsequent.

⁸ The legal definition of the undertaking is established in the Article 4 point 1 of u.o.k.k.

⁹ See more: art. 14 of u.o.k.k.

¹⁰ See more: *Guidelines on the Criteria and Procedure...*, p. 45 and subsequent.

¹¹ See also para. 3 of *Regulation of the Council of Ministers of 23 December 2014 on the notification of intended concentration of undertakings*, Journal of Laws of 2015, item 79 as amended.

¹² Journal of Laws of 2017, item 1876 as amended.

centration is mostly caused by mergers and takeovers, whereas changes in competition are the results of mergers, takeovers and regulations, which stimulate the entry and exit barriers [Pawłowska, 2013, p. 22]. Nonetheless, in the opinion of KNF in 2013, i.e., under the conditions of high stability and efficiency of the national bank system, the level of concentration in the Polish banking system was close to

optimum [KNF 2013].

It can be said that, on the one hand, the number of mergers and takeovers in the Polish banking sector is not significant, but on the other hand, taking into account the share in the assets of this sector, there is a small increase in concentration. The data in Table 1 confirm this assumption.

Table 1: Measures of concentration in the Polish banking sector in the years 2008-2013

Specification	2008	2009	2010	2011	2012	2013
Number of banks	649	643	646	642	642	640
CR5	44.3%	44.19%	43.88%	44.32%	45.00%	46.07%
CR10	62.19%	63.46%	63.01%	63.37%	64.61%	67.30%
CR15	72.93%	74.07%	74.92%	75.70%	77.41%	78.78%
HHI	549	580	570	577	580	600

Source: [Mikołajczyk, 2014].

The number of banks did not change significantly. In 2008, it was 649 banks, and in 2013, it was 640. The share of five biggest banks in the assets of the entire bank sector had an increasing trend in the period considered. A similar trend was for ten and fifteen biggest banks (CR10 and CR15). On the other hand, the concentration of ten biggest banks in Poland is lower than the average in Central Europe (where it is 76%). Similar, the value of the HHI in Poland is also lower than in Europe [Mikołajczyk, 2014, p. 131]. Similar assumptions are also included in the Financial Authority Report, according to which, low concentration in comparison to Europe marks the Polish banking sector. It could change in the future because of mergers and takeovers. The reasons for this are actions of some strategic investors of Polish banks, the more significant involvement of the most prominent national insurance group in the banking sector. Moreover, the decline of profitability of the banking sector can strengthen the tendency to increase concentration, because more important institutions are more profitable [KNF, 2017, p. 132].

It should be taken into consideration that the above mentioned ratios of concentration are a little different as regards commercial banks only (i.e. excepted cooperative banks). It shows that cooperative banks in Poland influenced the value of the HHI. Therefore, possible changes or consolidations among these banks can automatically yield, changing the data for

the entire banking sector [Mikołajczyk, 2014, p. 131].

The data in Table no 2 shows Herfindahl index for credit institutions and share of total assets of five largest credit institutions (CR5) in the EU countries in the years 2013-2017.

According to the data from table 2, in the years 2013-2017 the number of banks in Poland was: in 2014 – 654, in 2015 – 670, in 2016 – 659 and in 2017 – 645, respectively. Thus, the number of banks in Poland also did not change a lot in the period considered. The Herfindahl index in other European countries is diverse. For example, in the year 2017 in Germany there were 250 banks and in Slovakia – 1,332.

The share of total assets of five largest credit institutions in Poland in the years 2014-2017 was at a similar level of circa 48% (decreased from 48.3% in 2014 to 47.5% in 2017). In comparison to the year 2013, in which CR5 was 45.2%, it shows a little increase in concentration in the Polish banking sector. The CR5 in other European countries were also diverse. Poland has lower concentration than the other countries of Central Europe (e.g. in the year 2017 in the Czech Republic – 64.1%, in Estonia – 90.3%, in Lithuania- 90.1%, in Romania – 59.4%).

The main reasons for increasing concentration in the banking sector in Poland in the years 2014-2016 were mergers and takeovers, which were 2 or 3 per annum (in the case of commercial banks)¹³. The President of UOKiK

¹³ See more: *Raport o sytuacji banków w 2014 r.* [The Report about bank situation in 2014], KNF, Warsaw 2015, p. 20, *Raport o sytuacji banków w 2015 r.* [The Report about bank situation in 2015], KNF, Warsaw 2016, p. 19, *Raport o sytuacji banków w 2016 r.* [The Report about bank situation in 2016], KNF, Warsaw 2017, p. 18.

has a dozen cases annually concerning control of concentration in the banking sector (e.g. in the year 2015, there were 15 cases). Therefore, the reason for this little increase in concentra-

tion was also the decisions of the President of UOKiK (e.g. in the year 2014 there was a significant increase in concentration from 45.2% in 2013 to 48.3% in 2014)¹⁴.

Table 2: The Herfindahl index* for credit institutions and share of total assets of five largest credit institutions in the years 2013-2017 (index ranging from 0 to 10,000 and share of five largest credit institutions in %)

Country	Herfindahl index for credit institutions (based on total assets)					Share of total assets of five largest credit institutions				
	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017
Bulgaria	730	836	919	939	906	49.9	55.0	57.6	58.0	56.5
Czech Republic	999	949	987	1,009	1,028	62.8	61.3	63.3	64.7	64.1
Denmark	1,16	1,19	1,18	1,224	1,123	68.4	68.1	67.8	68.3	65.7
Germany	266	300	273	277	250	30.6	32.1	31.4	31.4	29.7
Estonia	2,483	2,445	2,409	2,406	2,419	89.7	89.9	88.6	88.0	90.3
Ireland	671	673	672	636	658	47.8	47.6	45.9	44.3	45.5
Greece	2,136	2,195	2,254	2,332	2,307	94.0	94.1	95.2	97.3	97.0
Croatia	1,384	1,364	1,396	1,405	1,387	72.9	72.3	72.7	73.0	72.8
Spain	719	839	896	937	965	54.4	58.3	60.2	61.8	63.7
France	568	584	589	572	574	46.7	47.6	47.2	46.0	45.4
Italy	406	424	435	452	519	39.6	41.0	41.0	43.0	43.4
Cyprus	1,645	1,445	1,443	1,366	1,964	64.1	63.4	67.5	65.8	84.1
Latvia	1,037	1,001	1,033	1,08	1,235	64.1	63.6	64.5	66.5	73.5
Lithuania	1,892	1,818	1,939	1,938	2,189	87.1	85.7	86.8	87.1	90.1
Luxembourg	357	330	321	260	256	33.7	32.0	31.3	27.6	26.2
Hungary	862	792	763	787	802	51.9	49.3	49.4	49.8	49.6
Malta	1,458	1,648	1,62	1,602	1,599	76.5	81.5	81.3	80.3	80.9
Netherlands	2,105	2,131	2,104	2,097	2,087	83.8	85.0	84.6	84.7	83.8
Austria	405	412	397	358	375	36.7	36.8	35.8	34.5	36.4
Poland	586	656	670	659	645	45.2	48.3	48.6	47.7	47.5
Portugal	1,197	1,164	1,215	1,181	1,22	70.3	69.2	72.3	71.2	73.1
Romania	821	797	860	894	909	54.4	54.2	57.4	59.1	59.4
Slovenia	1,045	1,026	1,077	1,147	1,133	57.1	55.6	59.2	61.0	61.5
Slovakia	1,215	1,221	1,25	1,264	1,332	70.3	70.7	72.3	72.7	74.5
Finland	3,41	3,63	3,16	2,3	1,7	87.1	89.7	88.0	80.5	73.5
Sweden	876	880	866	845	914	58.3	58.5	57.8	56.3	58.2
United Kingdom	525	462	438	422	453	43.7	38.9	37.0	35.5	36.9

Source: EU structural financial indicators, <http://sdw.ecb.europa.eu/reports.do?node=100002869> (accessed: 15.09.2018).

* The Herfindahl index refers to the concentration of banking business (based on total assets). It is obtained by summing the squares of the market shares of all the credit institutions in the banking sector. The exact formula according to which data must be transmitted to the ECB is reported in the ECB Guideline on monetary and financial statistics (recast), (ECB/2014/15).

Notes to table: 1) The data in these tables represent amounts recorded at the end of period, with the exception of the number of employees of credit institutions in table 1 in which the average number in the period is in question. 2) These data as well as EU and euro area aggregates are available in the Statistical Data Warehouse. 3) The Herfindahl index (HI) refers to the concentration of banking business (based on total assets). The HI is obtained by summing the squares of the market shares of all the credit institutions in the banking sector. The exact formula according to which data must be transmitted to the ECB is reported in the ECB Guideline on monetary and financial statistics (recast), (ECB/2014/15).

5. Closing Remarks

The market mechanism is based on competition. Without competition, it would not provide optimal allocation of goods and services. That is why the protection of market competition is so important. The antitrust law aims to protect the market against the anticompetitive behaviour of companies, especially against monopolisation. Negative consequences of monopolisation of the market can destroy this optimal allocation. Therefore, the antitrust authorities control the level of the monopolisation of the market. A method of counteracting this is to control market concentration. Market concentration has different forms, such as mer-

gers and takeovers of companies, but the aim of these actions is one – to strengthen market power and dominance on the market by a small number of companies (or banks in the banking sector). These actions can lead to monopolisation. Therefore they are under control of antitrust authorities.

The banking sector is a part of the financial market. The financial market is a specific kind of a market because it plays a vital role in the national economy. The financial market, and especially the banking sector, provides the flow of financial means among different entities (private and public). Any disturbances in the banking sector can influence the entire economy. That is why the banking sector is under

¹⁴ See more: UOKiK, *The Report...*, 2015, s. 22.

individual state supervision and has a unique legal regime.

Furthermore, financial services are specific because of their immaterial and complicated character. The consumers usually do not have professional, financial knowledge which is necessary to assess the economic risk of these services. Therefore, the state should protect consumers against (possible) harmful actions of financial institutions such as banks.

All issues mentioned above contribute to the fact that the antitrust institutions protect the market (and also consumers) against anti-competitive market practices and monopolisation. In the legal aspect, these actions in Poland assume the procedural form of counteracting of the President of UOKiK who, among others, has procedural instruments to control concentrations on the market. The same rules of controlling concentration exist in the banking sector, so the President of UOKiK issues consents on

bank mergers or takeovers, but in this case, the consent of KNF is also required.

Concentration in the banking sector in Poland is at a similar level as in some European countries. It can be assumed that, in the future, the number of mergers and takeovers in the Polish banking sector could increase because of, among others, actions of some strategic investors of Polish banks, more significant involvement of the most prominent national insurance group in the banking sector. In the years 2014-2017 the share of total assets of five largest credit institutions in Poland was at a similar level of circa 48%.

The analysed legal regulations of the Polish antitrust law and the data concerning control of concentration in the banking system leads to the conclusion that the Polish antitrust authority has sufficient legal instruments to control mergers and takeovers in order to prevent monopolisation of the financial market.

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