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Approaches to the recognition of a commercial practice as unfair and the implication of such recognition. *Examples from Poland*

Minsk, 22 May 2019



PRESENTATION PLAN

- sources of information
- types of proceedings
- types of decisions
- other measures to enforce collective consumer interests
- case study



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Sources of information

- Complaints and signals (from consumers)
- Written notice of: suspected infringement of collective consumer interests/ suspected use of abusive clauses
- Information from other public administration bodies (e.g. Financial Ombudsman, Polish Financial Supervision Authority, municipal and district consumer ombudsmen)
- Information from non-governmental organisations
- Media monitoring (e.g. financial blogs, press reviews)
- Information gathered during planned analyses of standard forms of agreement and verification of trader's practices
- Inspections, mystery shopping



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What do we do with information (signals/complaints/formal notices)?

- Analysis (checking received documents, Internet, trader's websites, internal registers)
- Verifying if the case is individual or if it may infringe collective consumer interests
- Consulting (within the office, other administrative bodies)
- Forwarding the case to other competent authority
- If there are legal grounds for our action – deciding on type of the measures that should be taken (e.g. soft calls, preliminary proceedings)



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Soft calls

- the option to call on a trader to: discontinue the practice without the need to initiate proceedings/or to submit information
- the solutions of this type are applied in particular in the case of less harmful practices
- enables faster elimination of practices from the market than formalised proceedings
- at least 14 days for the trader's answer

Explanatory proceedings

- to gather information/evidence
- traders are asked detailed questions (documents, copies of agreements, statistics on complaints, standard forms of contracts, procedures, phone conversation schemes)
- pecuniary penalty in case of failure to provide information on request of the OCCP (up to EUR 50.000.000)
- analysing/consulting if there are grounds to commence „proper” administrative proceedings



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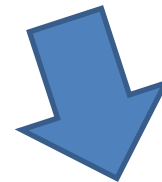
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Explanatory proceedings/soft calls

Explanatory proceedings/soft calls



Proceedings
concerning collective
consumer interests



Proceedings
concerning unfair
standard contract
terms

Proceedings before the President of the OCCP

- administrative proceedings
- initiated *ex officio*
- administrative decision (but not preliminary proceeding)
- an appeal to the Court of Competition and Consumer Protection (civil proceedings)



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Measures to enforce the prohibition of **practices infringing collective consumer interests** and **application of unfair contract terms** (elimination of lasting effects):

- providing information to consumers (current consumers)
- publication of decision in whole or in part at the expense of the trader (in newspapers)
- reimbursement of fees/margins/other costs
- fine (up to 10% of turnover from last year)

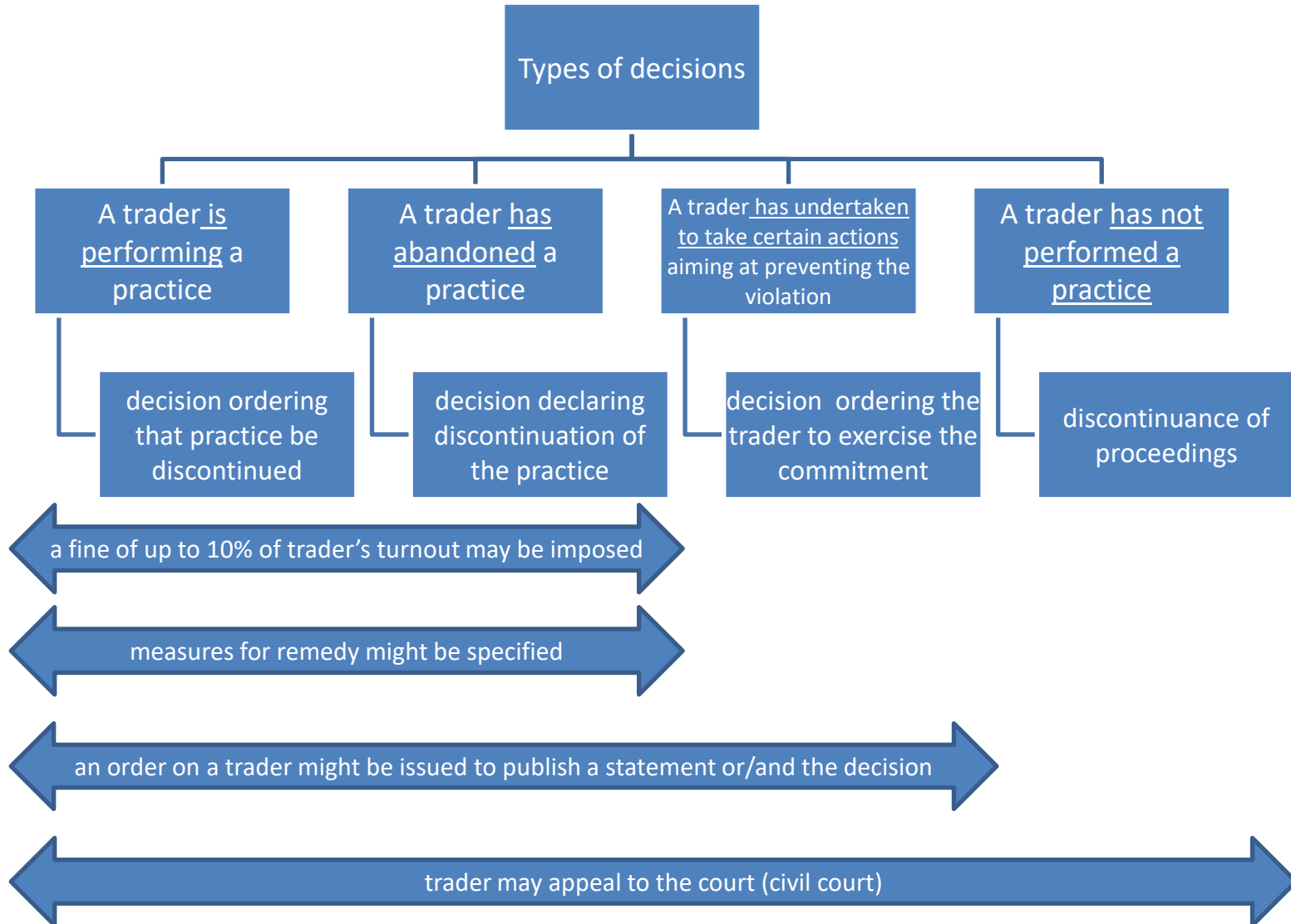


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Types of decisions in cases of practices violating collective consumer interests



Voluntary commitment (type of decision)

- the most beneficiary for the trader and the consumer (no fine for trader, reimbursement of fees/margins/other costs for consumers)
- the trader obligates himself to take/cease actions to stop infringement or remedy consequences
- information that the OCCP gather within the proceeding: total amount of reimbursement, number of consumers to be compensated (it is not made public)
- in decision the trader is ordered to comply with his commitments
- the specific time is given to fulfill commitments
- after that time the trader is obliged to inform the OCCP about the implementation of commitment



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Court proceedings (if the trader appeals)

- decisions might be challenged before the Court of Competition and Consumer Protection (I instance) and the judgement can be appealed to the court of II instance (+ claim to the Supreme Court is also possible)
- the trader has 14 day to appeal to the court
- the appeal may be based on the alleged defects of decision's „charges” or decision's reasoning
- proceedings before a court are civil proceedings and follow civil law principles
- both parties are eqally entitled to participate in the proceedings and logde the motions
- legally binding decision is effective

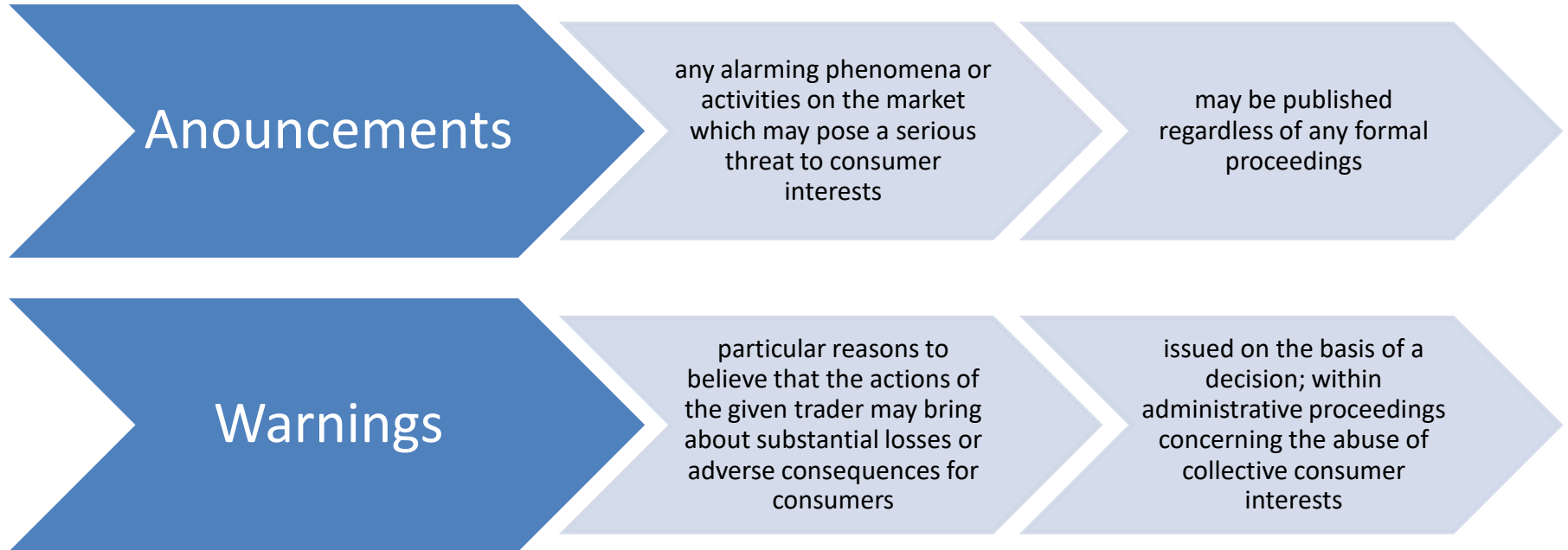


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Additional instruments used by the OCCP



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CASE STUDY

- The OCCP received complaints stating that Bank was: (1) increasing the margin on promotional mortgage loans and (2) increasing the fees charged for maintaining bank accounts
- In the opinion of the bank, the borrowers failed to adhere to the terms and conditions of the promotional offer pursuant to which lower installments were due (they were required to deposit a specific amount on their accounts every month)
- Many customers were transferring the money from another account maintained at the Bank. The bank, however, was only recognizing transfers made from external sources. In a result, the margin was increased.
- Te OCCP analyzed the terms and conditions of the promotion and determined that no explicit requirement was contained therein stating that the transfers must be made from accounts maintained at other banks. Therefore, borrowers could be in compliance with the terms and conditions of the promotional offer and were eligible to pay lower margin.



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CASE STUDY

- The Bank had also increased the fee for the bank account from PLN 18 to PLN 22. Holders of this type of account could take advantage of preferential mortgage loan conditions. When they refused to accept the increased fee, however, and intended to terminate the account agreement, they faced the threat of an increased interest charged on the mortgage loan taken. The negative financial consequences that the consumers faced in this specific situation have raised the OCCP's reservations.
- In the course of the administrative proceedings, the Bank committed to amend its practices and to compensate its former and current customers whose margin rates and account fees had been increased



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CASE STUDY

The Bank committed to:

- restore the lower margin charged on promotional mortgage loans,
- refund the difference between the increased and the promotional margin,
- restore lower account fees (PLN 18) and refund the difference resulting from the fact that higher fees have been charged,
- inform its customers about the OCCP's decision by mail, via the online banking platform, on its website and through press announcements.

Current customers of the Bank received automatic refunds (within 3 months from the decision becoming final), while former customers needed to submit a special application to the bank). They had to apply to the Bank for a refund, in writing, within 6 months from the decision becoming final. The application needed to state the agreement number and the bank account number.



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Thank you for your attention



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