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# Decisions issued by the President of the Office of Competition and Consumer Protection regarding the imposition of penalty payments on entrepreneurs as a repressive sanction

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**Abstract:**

**Aim:** The purpose of this paper is to draw attention to the nature of decisions issued by the President of the Office of Competition and Consumer Protection regarding the imposition of penalty payments on entrepreneurs for infringements of the Protection of Competition and Consumers Act of February 26, 2007, which is one of the indications of restrictions on economic freedom. Special attention has been paid to the criteria applied by the President of the OCCP for imposing penalty payments while indicating the changes introduced by amendments to the Act which came into force on January 18, 2015.

**Design / Research methods:** Legal historical method, systematic and teleological interpretation, comparative law

**Conclusions / findings:** Both the rules and the criteria required to be applied by the President of the OCCP when inflicting punishment are included in a catalogue of directives in Article 111 of CCPA. In the catalogue, the legislator attaches particular importance to the premise consisting in a breach of provisions of the law and a previous breach of the same legal act while other elements, separate for each type of breach, are specified later on, imposing on the President of the OCCP the obligation to consider both attenuating circumstances and aggravating circumstances when deciding on the degree (amount) of the penalty. Irrespective of the above, due to the open catalogue of circumstances affecting the gravity of the penalty, the President of the OCCP may also consider some circumstances indirectly implied in the act and developed by the judiciary decisions, which include the type of non-compliance or breach, the degree of violating the public interest, intentional or unintentional action orduration of the breach.

**Originality / value of the article:** To signal criteria changes applied by the President of the OCCP for imposing penalty payments while indicating the changes introduced by amendments to the Act, which came into force on 18 January 2015.

*Keywords: regulation, decision of the President of the Office of Competition and Consumer Protection, penalty payments, competition, entrepreneur.*
JEL: K23.

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## 1. Introduction

The aim of present paper is to present the general outline of a particular type of economic interventionism, consisting in applying by the competition and consumer protection authorities legal instruments in the form of penalties for breaching the provisions of the Competition and Consumer Protection Act of February 16, 2007 (consolidated text: Dz.U. [Journal of Laws] of 2017, item 229; hereinafter: CCPA). Special attention will be given to the range of possible penalty payments and the rules concerning the actions to be taken by the President of the Office of Competition and Consumer Protection (hereinafter: President of the OCCP) upon their imposition, taking into account above all the criteria affecting the amount of imposed penalty payments, which stem both from the Office of Competition and Consumer Protection and from the abundant repository of decisions. In order to specify the elements taken into consideration when deciding on the measure of the penalty which is a peculiar economic problem to an unlawfully operating entrepreneur, I will analyse decisions issued by the President of the Office of Competition and Consumer Protection and the provisions of CCPA, the latest changes in this scope, as well as judicial decisions of common courts, simultaneously taking into account competition protection regulations in the EU law.

The analyses presented in the paper should be first set in the grounds for economic constraints, given in the legal literature. Such constraints form one of the core functions performed by the state bodies in the sphere of economy, next to the police and control (cf. Strzyczkowski 2009: 160–162; Kocowski 2009a: 490–491).

From the objective perspective, constraints can be defined as a set of measures aimed, from the social viewpoint, at protecting certain states, goods and interests which serve as determinant of public interest. As indicated in the literature, common goods, social justice, economic freedom, effectiveness of the development of structures are subjected to economic constraints, similarly to free and fair competition which is the main topic of this paper. Constraints should be interpreted as a sphere of restricting activity of the state bodies, aiming at the protection of and giving preference to economic interests of certain groups in juxtaposition to individual interests of entities transacting business. In this respect, one may say that, to implement subjective freedoms, and the freedom of economic activity in particular, regulation restricts freedom of operation of entrepreneurs (Kiczka 2009: 341–443). Another feature of this institution is its unstable and

changeable nature which, to a large extent, arises from the current economic situation subject to a variety of evaluation. In consequence, the catalogue of protected goods is variable and set by the applicable law.[1] Similarly to other state functions classified to economic interventionism, constraints consist in setting requirements in the form of prescriptions and prohibitions contained in general or specific legislature by the state bodies. Typically, they are contained in directly applicable legal norms (Kiczka 2013: 531–532). Here must be noted that, in such case, the condition of an entrepreneur is made specific by the entity itself through interpretation of the content of a norm.

## 2. Limitation of free competition as a manifestation of regulation in public economic law

Constraints in public economic law manifest themselves in the limitation of free competition.[2]Because of a multi-component nature of the sources of the competition law in Poland, two legal systems apply, i.e. the system formed the European Union and domestic legal order (cf. the Treaty on the Functioning of the European Union, EU Official Journal C 2012 No. 326, p. 47, and derivative law acts, including Council Regulation (EC) No. 1/2003 of December 16, 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty on the EU, Official Journal L No. 1 p. 1; Council Regulation (EC) No. 139/2004 of January 20, 2004 on the control of concentrations between undertakings, EU Official Journal L No. 24, p. 1;Council Regulation (EC) No. 659/1999 of March 22, 1999laying down detailed rules for the application of Article 93 of the Treaty establishing the European Community, EU Official Journal L No. 83, p. 1; Council Regulation (EC) No. 994/98 of May 7, 1998 on the application of Articles 87 (former Article 92) and 88 (former Article 93) of the Treaty establishing the European Community to

[1] Among states and goods protected by the regulation of the economic nativity, one may specify such protected states and goods as common good, social justice, strategic natural resources of the state, live sea resources, mineral bed deposits, the market, economic freedom, free and fair competition, effective development of economic structures, efficiency of production and market trade, and variety of interests of individual entities (cf. Kocowski 2009b: 11).

[2] It is worth noting that, both in the legislature, the doctrine of economic law and in judicial decisions, the term "competition" is insufficiently defined and, in consequence, very different more specific definitions of the term are in use. In the Polish doctrine and judicial decisions, two major trends in defining competition are found, i.e. freedom-related and effectiveness-related trend, as each trend carries different understanding of limitation of competition concept. However, irrespective of these trends, it is assumed that protection of competition does not consist in protecting "free competition", but "effective competition" (cf. Modzelewska-Wąchal, Sachajko 2002: 10; Stefaniuk 2005: 108) The same concept, considered the most adequate one, is advocated and used by R. Stefanicki who defines it as a certain intensification of rivalry of entrepreneurs on a relevant market to protect economic effectiveness and, indirectly, protect interest of buyers of market goods (Stefanicki 2014: 4 ff.).

certain categories of horizontal State aid, EU Official Journal L No. 142, p. 1, as well as abundant secondary legislation issued by the Commission). As for the anti-monopoly law, the relationship between the European law and the Polish law took such shape that the EU law should be applied directly, in parallel to the national standards, while in the situation when regulations of both laws coincide, the EU law takes priority (Pawełczyk 2013: 617–618). With this regulation in mind, in this paper I will refer to the Polish legislation only while indicating that the basic source of regulation in the Polish legal order is the CCPA.[3]Regulation of the CCPA, as a part of public economic law (cf. Banasiński 2003: 270–271), by realizing the public interest which is directly expressed in it or can be implied from it (Bernatt et al. 2014: 722), shapes the relationship between the public authority bodies, i.e. "the public hand", and entrepreneurs.

The core of the CCPA regulation, being also its objective, is protection of competition, manifesting itself in complex control of the area by the legislator through introduction of substantive regulations (prohibition of competition-limiting practices, preventive control of concentration), procedural regulations applied in proceedings conducted in connection with violations of substantive rules and provisions laying down sanctions for these violations. However, the above does not indicate that the regulation is exhaustive since it contains references to other acts of law. Still, the other subject matter of the CCPA, namely the protection of consumers, is not such extensively regulated. According to the opinions in legal literature, it can be described as "fragmentary regulation of the public protection of the interests of consumers" (Janusz et al. 2001: 180).

In principle, three types of cases specified in Article 1 of the CCPA are subject to the subjective application of the CCPA regulations, i.e. objectives and subject of the CCPA regulation, the scope to which the CCPA regulations are applied and bodies competent in consumer and competition protection cases.

Considering that, in case of a non-compliance to the rules of competition, sanctions caused by such non-compliance will be imposed on entrepreneurs, it can be assumed that competition protection law is addressed to entrepreneurs or unions of entrepreneurs (cf. Article 4 items 1 and 2 of CCPA; Stefanicki 2014: 3).

[3] The "competition law" system is built of two core elements, i.e. competition protection law (including the anti-monopoly law) and unfair competition law (cf. Kępiński 2014: 9; Bernatt et al. 2014: 722–723).

## 3. President of the OCCP as the body competent in matters of competition

The public-law nature of CCPA is determined also by the fact that the President of the OCCP is the competent body in matters of competition, being the public administration body recognised as "the spokesman in the public interest" (Bernatt et al. 2014: 722). Contrary to the public bodies competent in consumer protection matters, the President of the OCCP is the particular and only competent body of the central state administration, according to the provisions of Article 29 par. 1 of CCPA. As an anti-monopoly body competent on all markets who can take actions towards or *vis-à-vis* any entrepreneurs, itis predominantly characterised by taking *ex post* actions consisting in combating practices which limit competition (Jaroszyński 2014: 827).

In the provisions of Article 31 of CCPA, which defines at a functional scope of authority of the President of the OCCP, 16 areas of activity of that body are mentioned.[4] In their field, the President of the OCCP implements tasks with the assistance of the OCCP (Kohutek 2014). According to Article 31 item 2 of the CCPA, one of the core functions of the President of the OCCP is "issuing decisions on competition-limiting practices, in matters of concentration of entrepreneurs and in matters of practices violating collective interests of consumers, as well as other decisions provided for in the Act". This sphere of competences falls under the category of "decision-making activities". Decisions issued by the President of the OCCP are binding on their addressees on terms of the final settlement of the essence of a case which contain binding rulings on rights or obligations of the addressees. The authority to impose fines onto the addressees of the decisions, in case of their failure to comply, is a coercive measure, given to the President of the OCCP, ensuring the execution of decisions (Kohutek 2014). Penalty payments play an important role in the competition law, firstly by being economic onerous for the entrepreneurs who breach the rules of competition, secondly by redressing a damage caused to a competitor, which resulted through unlawful action of an entrepreneur (Kępiński 2014: 11).[5]

[4] The areas in which the President of the OCCP is active can be divided into three categories: 1. "consisting in controlling and monitoring markets, 2. application of binding measures, as instruments of state interference with the economy for the purpose of direct protection of competition and consumers and 3. cooperation with different public, domestic and foreign, entities, entrepreneurs and consumers" (Jaroszyński 2014: 845). .

[5]However, the types of penalties mentioned in the unfair competition law cannot play that role, due to the fact that the penalties mentioned therein have largely a compensatory function (Kępinski 2014: 11; Szwaja, Tischner2014: 586).

## 4. Penalty payments imposed on entrepreneurs

Imposition of penalty payments, as indicated above, is an instrument of considerable importance in the hands of the President of the OCCP, aimed at "coercing" entrepreneurs into complying with and applying the CCPA rules and decisions of anti-monopoly bodies as well as protecting and securing correctness and efficiency of proceedings taking place before the President of the OCCP (Król-Bogomilska 2014: 1317–1318). These penalties are a kind of sanctions aimed at protecting competition. In the doctrine, various functions are attributed to the fines of penal nature, i.e. preventive, enforcement, repressive as well as restitutional functions (Kohutek2014; decision of the President of the OCCP of July 16, 2004, file ref. no.RWA-21/2004, Official Journal of the OCCP, item 320; Piszcz 2013: 261–263; Strzyczkowski2009: 439).

Repressive and educational character of penalty payments arises from their proportionality to the economic potential of an entrepreneur who committed a violation of the CCPA regulations(judgement of Supreme Court of June 27, 2000, file ref. no. I CKN 793/98, Legalis49228; judgement of the Court of Appeal in Warsaw of February 6, 2007, file ref. no. VI ACA 810/06, OCCP Official Journal No. 3, item 37; judgement of the Regional Court in Warsaw – the Competition and Consumer Protection Court (SOKiK) of October 2012 17, file ref. no. XVII AmA 226/10, Legalis739435; judgement of the Court of Appeal in Warsaw – VI Civil Law Department of January 12, 2012, file ref. no. VI ACa 956/11, Legalis no. 532588). I fully agree with the view that this is the basic function of a penalty payment since it consists in applying a fine for a failure to perform obligations arising either from the law or from any decisions of competition protection bodies. Such a payment confers in the sphere of property of the punished entrepreneur or the union of entrepreneurs so that, by imposing ailments, it guarantee the implementation of the provisions of CCPA and the abandonment of the unlawful activity of entrepreneurs (Strzyczkowski 2009: 439; cf. Król-Bogomilska 2001: 38 ff.).

Incidentally, it is also important to point to the legal nature of the payment penalties imposed by the President of the OCCP. In view of the analysed decisions of the Competition and Consumer Protection Court in Warsaw, the Court of Appeal in Warsaw and the Supreme Court, the case law line developed by the Supreme Court should be mentioned here, shared by courts of lower instances. According to it, fines imposed by anti-monopoly bodies, in principle, are not criminal sanctions by nature but the penalties of administrative law nature (cf. judgement of the

Supreme Court of June 1, 2010, file ref. no. III SK 5/10, Legalis no. 395086; judgement of the Supreme Court of April 21, 2011, file ref. no. III SK 45/10, Legalis no. 432334).

Before discussing the principles and criteria accompanying the President of the OCCP in the imposition of payment penalties, I will point again to the subject matter of the CCPA regulations, which includes the protection of competition cases and consumer cases and it is regulated in detail by the provisions of Article 1 clause 2 of CCPA, indicating three categories of cases: competition limiting practices (i.e. competition-limiting agreements regulated in Articles 6–8 of the OCCP Act and the abuse of dominant position regulated in Article 9 of the OCCP Act), anti-competition concentration of entrepreneurs and practices breaching collective interests of consumers. In all these cases, the President of the OCCP is the body competent to apply sanctions in the form of fines.

It must be noted that the penalties specified in the Article 106 of CCPA may be imposed on some entities which are entrepreneurs defined in the Article 4 item 1 of the same act. Furthermore, it is assumed that application of fines for breaching the antimonopoly law standards should be independent from the legal and organisational form of an entrepreneur as well as from the involvement of the public funds and the purpose for which its profit is to be earned. Therefore, satisfying the condition for recognition of a given entity as an entrepreneur in accordance with Article 4 item 1 of CCPA is a sufficient premise for admissibility to use fines.

Having in mind the topic of this paper, Article106 and Article 111 of CCPA should be analysed.[6] These provisions refer directly to the amount of the fines, which may vary depending on the criteria for imposing the payment penalties. Sanctions such as fines are of optional nature,[7] but the body should follow the rule of equal treatment of entrepreneurs(Król-Bogomilska2014: 1318; cf. chapter 2 of CCPA).

The Act of June 10, 2014 effective since 18 January 2015 (Act of June 10, 2014 on amending the Competition and Consumer Protection Act and the Code of Civil Proceedings, Dz.U. [Journal of Laws] of 2014, item 945, hereinafter: amended CCPA) changed the provisions concerning the amount and components of fines applied to entrepreneurs for breaching CCPA regulations. Therefore, below I am going to compare consecutive regulations focusing on their difference, since the solutions in force, introduced by the above-mentioned act, will be analysed

[6] It is worth noting that, apart from the fines specified in the Article 106, regulations concerning fines are also contained in Articles 106a, 107, 108, and 109 of the OCCP Act.
[7]Optional penalties are also provided for in the EU regulations (cf. Kohutek 2014).

further down in this paper. The main changes include replacement of the term "revenue", "financial year" with terms such as "sales", "accounting year",[8] including the rules for calculating sales in the Article 106 clause 3 of CCPA, and changes concerning determining the basis for calculating the amount of a fine when an entrepreneur has not reached sales in the amount not higher than the equivalent of EUR 100,000or has reached such sales, or when the entrepreneur does not have financial data required to calculate his sales before such decision is issued. The amended act offered more specific provisions on the elements affecting the amounts of fines imposed on entrepreneurs, as discussed later on in my paper. Until precise statutory regulations were introduced, the President of the OCCP, imposing a fine, followed guidelines developed and published by himself. However, the clarifications were not binding (cf. UOKiK 2012, 2013).

Without going into detailed analysis of different types of violations which are the basis for imposition of fines by the President of the OCCP, I will present amounts of currently admissible payment penalties. Differentiating substantive violations from procedural violation, the core difference, i.e. determining the basis for calculating amounts of the fines, should be pointed out. In case of breaches of substantive nature we deal with a percentage definition of the basis;[9] here the legislator only indicates the maximum penalty height, i.e. 10% of sales generated in the financial year preceding the year in which the fine is imposed.[10]In case of substantive penalties provided for in Article 106 par. 1 of CCPA, their complementary nature must be emphasized. Therefore, they are not solely-imposed fines but fines applied next to other administrative sanctions, consisting in finding a practice violated and ordering abandonment of such practice (Strzyczkowski 2009: 440–441; Król-Bogomilska 2014; 1323; Kohutek2014). The amount of the fine which could be imposed for a breach of a procedural nature has been provided for in a different manner. In view of the provisions of Article 106 par. 2 of CCPA, the fine is expressed in amounts with its cap at the PLN equivalent of 50,000,000 EUR. Considering the imposition of a fine onto an entrepreneur in an amount corresponding to the degree of a violation, one should analyse the criteria on the basis

[8]According to the rationale supporting the civil draft of CCPA amendment (http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=1383), the amendment consisting in introducing the concept of "sales" was connected with entrepreneurs' difficulties in applying the revenue criterion. By introducing the concept of "sales" which is strictly related to the size of a business, the basis for calculating the fines imposed by the President of OCCP can be made more realistic through elimination of such types of revenue as, e.g., FX gains/losses or sale of fixed assets which occur incidentally and may overestimate unnaturally the measure of the imposed penalties and come as an excessive burden on entrepreneurs.

[9] It is worth noting that specific caps of the fines expressed in amounts can be only give in one-by-one cases.

[10] Introduction of a percentage cap of a fine is a result of harmonising the national law with the EU law (cf. M. Król-Bogomilska2014: 1338–1318).

of which the amount of the fine is set, considering the caps[11] specified in Article 106 of CCPA. Before the amendment, the elements specified in Article 111 of CCPA, i.e., in particular, the period, the intensity, circumstances in which the breach occurred and the circumstances of a previous breach of CCPA, were imprecise to the degree that they required the President of the OCCP to follow the guidelines prepared and published by himself as well as the case law, upon imposition of fines (cf. Modzelewska-Wąchal, Sachajko2002: 1373 ff.). Nowadays, the issue has been solved by indicating in CCPA the elements which affect the fines imposed by the President of the OCCP in more detailed way. The catalogue of directives contained in the Article 111 clause 1 of CCPA, which are obligatory for the President of the OCCP, is open. In consequence, the President may also consider other circumstances implied in the provisions of the act. These circumstances, indicated by the judicature, include a type of breach of regulations (Judgement of the Court of Appeal in Warsaw – VI Civil Law Department of February 18, 2015, file ref. no. VI ACa 354/14, Legalis no. 1241809), the degree to which the public interest is violated (Judgement of the Court of Appeal in Warsaw – VI Civil Law Department of September 17, 2013, file ref. no. VI ACa 200/13, Legalis no.1049196), intentional or unintentional nature of an action,[12]and duration of a breach (Judgement of the Regional Court in Warsaw – Court of Competition and Consumer Protection (SOKiK) of October 30, 2013, file ref. no. XVII AmA 64/11, Legalis739435; judgement of the Court of Appeal in Warsaw – VI Civil Law Department of September 26, 2013, file ref. no. VI ACa 265/13, Legalis no 1049210). However, regarding the normative premises which affect the measure of the penalty, the provisions of the Article 111 clause 1 of CCPA should be indicated. This article emphasises, in particular, the premise of a breach of the act and the previous breach of the same act and only then other elements are indicated, separate for each type of breach. Irrespective of the above, the President of the OCCP, when setting the amount of the fine, is obligated, in a specific case, to consider both attenuating circumstances(Article 111 clause

[11] As pointed out by E. Modzelewska-Wąchal and M. Sachajko, the caps represent not more than a normative limit for adjudicating fines, introduced as a measure to discipline the parties presumably guilty and where absence of such caps should result in the regulation eliminating entrepreneurs from the market (cf. Modzelewska-Wąchal, Sachajko2002: 1380-1381).

[12] The amount of a penalty is also affected by the degree of fault. The concept of "being guilty of" or "at fault" as a premise considered when taking a decision on inflicting a penalty and deciding about its amount (severity) is relatively often mentioned in contemporary case law. Here again the concept of intentionality is emphasized (judgement of the Supreme Court of May 15, 2014, file ref. no. III SK 44/13, Lex no. 1459203; judgement of the Court of Appeal in Warsaw – VI Civil Law Department of September 17, 2013, file ref. no. VI ACa 200/13, Legalis1049196; judgement of the Court of Appeal in Warsaw – VI Civil Law Department of September 29, 2011, file ref. no. VI ACa 747/11, Legalis no. 739302; judgement of the Court of Appeal in Warsaw – VI Civil Law Department of June 18, 2014, file ref. no. VI ACa 1511/13, LEX no. 1527298).

3 of CCPA)[13] and aggravating circumstances(Article 111 clause 3 of CCPA). However, that the catalogue of the latter, contrary to the attenuating circumstances, is closed and does not allow for applying circumstances other than those specified in the act. Furthermore, when deciding on the amount of the fine, the body is obligated to apply the principle of proportionality and adequacy consisting in the level of the fine corresponding to the degree of harm inflicted by the entrepreneur.

## 5. Concluding remarks

It is indisputable that restriction of free competition is one of the manifestation of economic constraints aimed at protecting some goods, statuses and interests and the CCPA contains their normative regulations. The essential core of the CCPA regulation is protection of competition, and in case of non-compliance by entrepreneurs with the binding competition rules, the President of the OCCP has the power to impose fines by way of issuing decision. According opinions of legal scholars as well as the views presented in case law, apart from functions of lower importance such as restitutional, enforcement or preventive functions, the repressive function is primary attributed to sanctions in the form of fines. The restitutional function of a fine lies in the fact that it is impose to hit the property of the punished entrepreneur or association of entrepreneurs so that they suffer from an economic discomfort. Both the rules and the criteria required to be applied by the President of the OCCP when inflicting punishment are included in a catalogue of directives in Article 111 of CCPA. In the catalogue, the legislator attaches particular importance to the premise consisting in a breach of provisions of the law and a previous breach of the same legal act while other elements, separate for each type of breach, are specified later on, imposing on the President of the OCCP the obligation to consider both attenuating circumstances and aggravating circumstances when deciding on the degree (amount) of the penalty. Irrespective of the above, due to the open catalogue of circumstances affecting the gravity of the penalty, the President of the OCCP may also consider some circumstances indirectly implied in the act and developed by the judiciary decisions, which include the type of non-compliance or breach, the degree of violating the public interest, intentional

[13] The alleviating circumstances includes some positive elements which speak for reducing the fine or penalty imposed onto an entrepreneur.

or unintentional action orduration of the breach. Application of each of the above-mentioned circumstances shall depend on a case requiring imposition of a penalty.

The President of the OCCP, imposing a sanction with a repressive function in the form of a fine, is obligated to adapt the intensity of the penalty to the harmfulness of violations made by the punished entrepreneur, and in that way the principles of adequacy and proportionality which apply when deciding about the extent of the punishment are manifested.

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Ewelina DANEL

# *Decyzje Prezesa UOKiK o nałożeniu kary pieniężnej na przedsiębiorców jako sankcja o funkcji represyjnej*

## *Streszczenie*

**Cel:** Celem niniejszego artykułu było zwrócenie uwagi na charakter decyzji wydawanych przez Prezesa Urzędu Ochrony Konkurencji i Konsumentów w przedmiocie nakładania na przedsiębiorców kar pieniężnych za naruszenia przepisów ustawy o ochronie konkurencji i konsumentów z dnia 16 lutego 2007 roku będących jednym z przejawów reglamentacji wolności gospodarczej. Szczególna uwaga została poświęcona kryteriom towarzyszącym Prezesowi UOKIK przy nakładaniu kar pieniężnych z jednoczesnym zaznaczeniem w tym zakresie zmian wprowadzonych nowelizacją ustawy, która weszła w życie z dniem 18 stycznia 2015 roku.

**Metody badawcze:** historycznoprawna, wykładni systemowej i celowościowej, prawnoporównawcza

**Wnioski:** Zasady, jak również kryteria, którymi obowiązany jest kierować się Prezes UOKiK przy wymierzaniu wysokości kary zostały uregulowane poprzez zawarcie w art. 111 UOKiK katalogu dyrektyw. W katalogu tym ustawodawca szczególny nacisk kładzie na przesłankę w postaci naruszenia przepisów ustawy oraz uprzedniego naruszenia przepisów ustawy, a dopiero w dalszej kolejności wskazuje na inne elementy – odrębne dla każdego z rodzaju naruszeń, z obowiązkiem uwzględnienia przez Prezesa UOKiK przy ustalaniu wysokości kary - zarówno okoliczności łagodzących, jak i okoliczności obciążających. Niezależnie od powyższego, z uwagi na otwarty katalog okoliczności mających wpływ na wymiar kary, Prezes UOKiK może brać pod uwagę także okoliczności niewskazane wprost w ustawie, a wypracowane przez orzecznictwo, do których zalicza się rodzaj naruszenia przepisów, stopień naruszenia interesu publicznego, umyślność bądź nieumyślność działania bądź czas trwania naruszenia.

**Oryginalność/wartość artykułu:** Zasygnalizowanie zmian kryteriów towarzyszących Prezesowi UOKIK przy nakładaniu kar pieniężnych z jednoczesnym zaznaczeniem w tym zakresie zmian wprowadzonych nowelizacją ustawy, która weszła w życie z dniem 18 stycznia 2015 roku.

**Streszczenie**: Celem niniejszego artykułu było zwrócenie uwagi na charakter decyzji wydawanych przez Prezesa Urzędu Ochrony Konkurencji i Konsumentów w przedmiocie nakładania na przedsiębiorców kar pieniężnych za naruszenia przepisów ustawy o ochronie konkurencji i konsumentów z dnia 16 lutego 2007 roku będących jednym z przejawów reglamentacji wolności gospodarczej. Szczególna uwaga została poświęcona kryteriom towarzyszącym Prezesowi UOKIK przy nakładaniu kar pieniężnych z jednoczesnym zaznaczeniem w tym zakresie zmian wprowadzonych nowelizacją ustawy, która weszła w życie z dniem 18 stycznia 2015 roku.

**Słowa kluczowe**: reglamentacja, decyzja Prezesa Urzędu Ochrony Konkurencji i Konsumentów, kary pieniężne, konkurencja, przedsiębiorca.

JEL: K23