

MAXIMUM PENALTIES IMPOSED BY THE POLISH ANTITRUST AUTHORITY ON GAZPROM AND FIVE OTHER COMPANIES INVOLVED IN NORD STREAM 2

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President of the Polish Antitrust Authority (UOKiK) imposed record fine of 29 billion zloty (around 6.5 billion euro) on Gazprom for gun jumping practice. In cooperation with five companies, Gazprom has established a concentration scheme without prior consent of President of UOKiK, which was required. Other five entities participating in agreement for construction of gas pipeline were fined with combined amount of 234 million zloty (around 52,5 million euro).

Story have started in the end of 2015, when Gazprom, E.ON Global Commodities (now Uniper), ENGIE SA, OMV Nord Stream II Holding AG, Shell Explorataion and Production B.V. and Wintershall Nederland B.V. filed to UOKiK for consent for concentration. Submitted application foreseen, that all of appliers will be shareholders of joint venture company, set up with the only purpose – to build Nord Stream 2 pipeline. UOKiK President raised objections to concentration scheme, alleging it may disrupt situation of gas consumers in Poland and make Gazprom position in natural gas market stronger than it is allowed due to Polish and European competition law. After such statement, appliers decided to withdraw their application. It means there was no consent from the Polish Authority for concentration.

In April 2017, same entities make an agreement on financing the Nord Stream 2 project, through special

purpose vehicle registered in Switzerland, which sole owner is Gazprom. Refers to agreement's provisions, Gazprom financial participation in Nord Stream 2 is 4,5 billion euro and other five companies is 950 million euro each. According to press releases, the most important circumstance in this case is, that parties of the main agreement have possibility to become shareholders – because of by establishing a pledge on the stocks of SPV. Also, there are several affiliated agreements between the parties, e.g. loan agreements, which make cooperation of the companies very close.

President of UOKiK started anti-monopoly proceeding in 2018. The results of two-years investigation were clear and strict: Gazprom set up a joint venture entity by making several agreements, which in fact have the same legal result as previous concentration scheme. Justifying his decision, Tomasz Chróstny, President of UOKiK said: The level of their financial involvement remained similar, and the terms and conditions of financing were determined in a manner enabling them to take over the shares of at a later stage of the project. All participants of the concentration scheme share also the same interest in implementing the project. The fact that a joint venture is financed by participants of the gas market and not by financial institution proves that all the entities involved share the same economic interests. Without the participation of those entities, Nord Stream 2 would not be able to operate and to pursue the gas

pipeline construction project in the European Union, meaning that most probably it would not be established at all.

According to such circumstances, President of UOKiK decided to fine Gazprom with highest available fine in amount of 10 per cent of its annual turnover, 29 billion zloty (around 6.5 billion euro). This is probably the most strict penalty in the history of anti-monopoly authorities. Other companies involved in joint venture vehicle were fined with combined amount of 234 million zloty (around 52.5 million euro).

All of fined companies announced, that they will appeal from decision of President of UOKiK. Agreements for Nord Stream 2 are already conducted and the pipeline is not finished yet only because of international sanctions, mainly imposed by the United States. Build of Nord Stream 2 is a controversial theme for countries seated by the Baltic Sea. Furthermore, European Union still oppose this project, because of its contradiction

with environmental policy and decreasing demand for natural gas.

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