



Bernat, T. (2014). A Maintenance of a Dominant Market Position – on the Example of the Polish Post Office. *Equilibrium. Quarterly Journal of Economics and Economic Policy*, 9(3), pp. 9-20, DOI: <http://dx.doi.org/10.12775/EQUIL.2014.022>

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A Maintenance of a Dominant Market Position – on the Example of the Polish Post Office

JEL Classification: *D43; D61*

Keywords: *dominant position; antitrust law; maintenance of dominant position; allocative inefficiency*

Abstract: *The system changes of the Polish economy, which began in the 80s of the 20th century and were continued after the accession to the European Union in 2004, have caused significant transformations, not only in the economy and ownership relations, but also in single markets. What is more, some of the European Commission's guidelines have introduced the market regulations which were dominated by natural monopolies. These changes were to cause the competitiveness on the market and to improve its functioning in an efficiency allocative sense in order to make the consumers' situation better. However, it is often a kind of struggle without any visible effects in short or long term. One of such examples is the Polish Post Office as the national operator in the market of postal services.*

The scientific objective of this study is to answer the question whether the changes in the law regulating the postal market cause real changes in the market structure, resulting in a reduction in allocative inefficiency? The working hypothesis referring to such research problem is formulated as follows: large business entities operating in the monopolistic market structure until now use all of the tools – including changes in the law, to maintain their position. It causes an increase in allocative inefficiency of companies and market. The object of the research is Poczta Polska SA. The primary research method will be based on the analysis of

the legal rules, the analysis of the activities and entities' decisions and the comparative analysis. The active research is supported by the literature recognition.

Introduction

The economic concepts concerning the functioning of monopolistic entities in concentrated markets are connected with the classical and neoclassical schools. Both of them pay special attention to the issue of allocative inefficiency, which appears in the situation of market concentration and an attainment of a dominant position by one of the entities. This inefficiency results in the monopolistic prices, which exceed the prices characterising openly competitive markets and cause not only losses, which are the consequences of ineffective action, but also influence negatively social welfare, reducing it.

Against such a back drop, actions of entities functioning in concentrated market structures are under the supervision of appropriate government institutions – such an institution in Poland is called the Office of Competition and Consumer Protection. When it comes to particular markets or sectors, the proper agencies supervise them. For the postal service it is the Office of Electronic Communication. The main point raised in the study is whether the law modifications which were to improve competition and effectiveness in the market are indeed successful. It is visible on the example of this article that in a lot of cases the original expectations and intentions are not fulfilled.

Methodology of the research

The scientific objective of this study is to answer the question: do changes in the law regulating the postal market cause real changes in the market structure, resulting in a reduction in allocative inefficiency? The working hypothesis referring to such research problem is formulated as follows: large business entities operating in the monopolistic market structure until now use all of the tools – including changes in the law, to maintain their position. It causes an increase in allocative inefficiency of companies and market. The object of the research is Poczta Polska SA. The primary research method will be based on the analysis of the legal rules, the analysis of the activities and entities' decisions and the comparative analysis. The active research is supported by the literature recognition.

Allocative efficiency as the basis for anti – trust law

The work of institutions guarding competition (or acting against monopoly) is based on the theory of economy, which describes a perfect competition and benefits of it. It is taken into account a priori that this solution is the best one, considering the basic measures which are connected with notes of concentrated markets and the companies operating on them. An allocative inefficiency of dominant companies is possible to be proved in both theoretical and practical solutions. There are many doubts and allegations concerning achieving the real efficiency by the entities of perfect competition, which arise even from animadversion of rigid accusations targeting this model, like: ‘unreality of market activity’ (Matysiak, 2000, p. 521), the issue of one price and the optimization of action, unlimited number of entities and homogeneity of product (Danowska-Prokop *et al.*, 2003, p. 71) and perfect information (Hayek 2002), the problem of consumer’s individual preferences (Scitovsky, 1962, p. 263), the matter of natural monopolization (Syglitz, 1976, p. 657), the issue of innovative companies in understanding of J. Schumpeter (Schumpeter, 1995, p. 88) or finally the question – which one from the following solutions is the best one for economy: concentration or competition? (Syglitz, 1976, p. 658).

Regardless of the considerations mentioned above, allocative effectiveness is the fundamental aspect of antitrust law (protection of competition) functioning. Jurisprudence, from this perspective, depends on the solutions offered by the classical economic theory and those coming from a perfect competition. It is also connected with theoretical and practical researches, allowing to ascertain that activity limiting the market power of companies and increasing competition, have a positive effect in terms of the market and consumers’ positions (Lipowski, 2001, p. 305).

Theoretical analysis of comparative model can be one of the examples. The conclusion is clear: company, which has a market power, sells less and at higher prices than company functioning in a perfect competition (Blajer-Gołębiewska, 2010, p. 23). The conclusion is simple – by restricting market power and forcing entities to competition it is possible to gain lower prices and the greater amount of sold products¹. At the same time, according to A. Wojtyna, markets will function more effectively under the supervision

¹ For example, the liberalisation of European telecommunication market and its effect resulting in a decrease of prices of services. Decisions of antitrust authorities (Polish and European) which indicate the irregularities caused by the dominant entities is another example. There are, of course, a lot of doubts and problems that have to be resolved in order to achieve properly working antitrust law.

from particular state institutions because of the limitation of mate agreements or monopolistic positions (Wojtyna, 2001, p. 26).

When, though, should antitrust law apply? Considering the information above, it ought to work from the moment the activity of a business entity is not efficient in an allocative sense. However, there is a problem that the allocative efficiency is only in the structure of perfect competition which does not exist in reality on the grounds of the strict assumptions of the model. So the question is, when should the antitrust law start to apply practically? It ought to accept certain solutions called ‘second best’ which are the basis to active work. It leads to a few problematic questions: can only perfect markets be effective in their actions? Is the efficiency of a single market synonymous with the efficiency of the whole market? Is it possible to take any action regulating market in the situation when the monopoly arises in natural way? What to do when large companies combine with each other in order to enlarge their efficiency? etc.

The antitrust law from this perspective is to indicate the cases in which an activity of companies can cause inefficiency. What events should be therefore under the supervision of antitrust law? It can be either connected with unfair competition or activities impeding mechanism of competition (Miąsik, 2004, pp. 31-32). According to the antitrust law, there can be three types of phenomena in the market (The Law of competition, 2000):

- agreements between companies,
- making use of a dominant position,
- concentration of companies.

The commonsensical balance between activities conducting competitive and uncompetitive development is the fundamental issue (The Law of competition, 2000). It consists of competitive limitation analysis, its justification and an assessment of proportions between the limitation and the justification. The beginning of antitrust activities can be related to it. While in the concrete solutions, as an example the excess over the threshold of 40% of market’s shares, it is easy to remark this fact, there are a lot of cases in which the interpretation can be done in various ways.

For example, it is very difficult to interpret unequivocally the situation concerning: reduction of the production, sales or technological progress with losses to contractors or consumers. While the reduction in production is possible to be pinned down, as for sales and technological progress it is difficult to ascertain whether they have been reduced because of dominant position misuse (Kallay, 2012, p. 42).

The market of postal services in Poland – towards competition?

Since 2004, the time when Poland has entered the European Union, the market of Polish postal services has been regulated not only by the Polish law, but also by the law established by the European Union. Due to this fact, the market changes constantly, following the adopted law solutions. One of the most important directions of change is opening the market to an internal and external competition. It is connected with the construction of homogenous internal market of EU and its common rules. The direction is set by a so called postal guidelines. The last one – the 3rd guideline from 2008 – qualified the dates of opening the postal market in different countries belonging to EU. According to that guideline, the full opening ought to be done before 31 of December 2010, with a possibility of postponement. Poland has taken this opportunity. Therefore, the 31st of December 2012 was the date established as the day of opening the market (Raport Prezesa UKE, 2012, p. 3).

As a result of these changes, there should be fewer areas reserved to public operators, opening up the postal markets to competition and appearance of new entities in the market. How has it looked like in the past period in Poland? The areas reserved to public operator Poczta Polska SA, including service delivery, are the following (Raport Prezesa UKE, 2012, p. 8):

- Clearance, transport and delivery of items with correspondence up to 50 g within the domestic market, advertising deliveries and other packages, posted in a manner which makes it impossible to be checked, weighting up to 50 g,
- Clearance, transport and delivery of items with correspondence up to 50 g within the domestic market,
- Clearance, transport and delivery of items with correspondence within the domestic and foreign market, provided that they become the packages weighting up to 50 g during the process of collection and delivery;

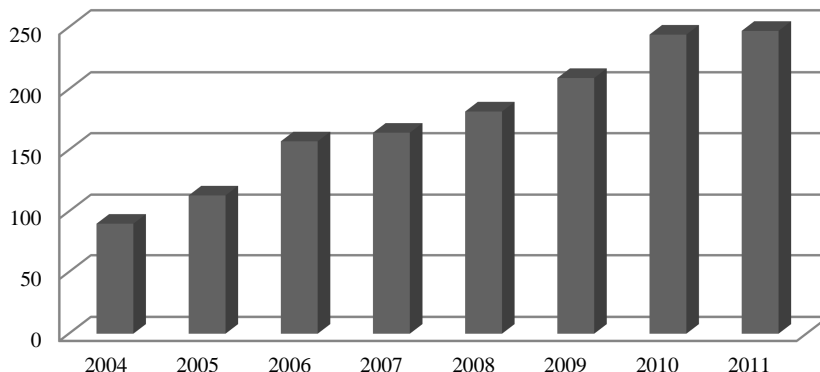
The areas mentioned above are considered to be the important source of market monopolization, which decide about an exclusivity of a single operator's acting. Looking at this record, it can be assumed that it considers only the deliveries weighing up to 50 g. Developing this strand of thought, pricing policy and the volume of sales of the Poczta Polska SA are also worth being mentioned. The importance of such a meaning is that it is a bulk sale, which means a few billions of deliveries per year.

For example, in 2011 it was over 2 billions of deliveries and 4 billions PLN of income, while 75% of flow was done on the reserved area (Raport Prezesa UKE, 2012, pp. 20-21).

Such quantities cause that even a little change in a single price of postal service will have a meaningful impact on a global volume of sale.

However, limiting the market power of entities by legal measures permitting competition may considerably reduce such abilities of market dominant. Market development is, therefore, a meaningful argument. As to the data presented by the Office of Electronic Communications (UKE), the number of operators in the postal service market has been successively changing over the years. In 1996, there were 15 operators, but till 2013 the number has increased up to 2562. The changes in the market of postal services after the accession to EU are shown in the figure below.

Figure 1. The number of operators in postal service market between 2004–2011



Source: Self study based on: Raport Prezesa UKE... (2012, p. 15).

The data provided by the chart prove that the number of operators has been increasing at a rapid pace during the considered period. Analyzing data within the percentage terms, it can be claimed that it was the increase of 274% between 2004–2011. More interesting results can be observed when looking at the changes in the number of operators, which is more than 1700%. Now, the important question is whether such an excellent increase in amount has resulted in changes of quality within the competitive aspect. It follows from the data presented above, which consider areas reserved for the Poczta Polska SA, that changes in competitive environment are not so

² The number of registered operators in the Office of Electronic Communications, <http://www.uke.gov.pl/marta/index.php>, (12.04.2013).

easy to gain. The market shares divided into four main categories of the postal services are shown in Table 1.

Table 1. The market shares of the Poczta Polska SA and other operators in the Polish market of postal services in 2011, on the basis of sales volume

2011	Poczta Polska	Other operators
Items with correspondence	88,40%	11,60%
Parcels	48,00%	52,00%
Direct mailings	92,00%	8,00%
Non – addressed mail	7,70%	92,30%

Source: Self study based on: Raport Prezesa UKE... (2012, p. 42).

When viewing the data presented in Table 1, the current state of the market can be seen. Poczta Polska SA holds a dominant position in two areas: items with correspondence and direct mailings. However, a decreasing trend is observed in those areas over the past few years – the market share of national operator slowly declines (Raport Prezesa UKE, 2012, p. 42). The shares in the market of items with correspondence decrease much more quickly than in the market of direct mailings (on which the market share of Poczta Polska SA is relatively stabilised over the last 3 years). The more significant decline of shares of public operator was observed in parcels; although, it is still the dominant position, holding nearly half of market shares. The most notable changes have taken place in sending non – addressed mails, where national operator has only about 8% of shares.

The analysis of above data should be supplemented with the assessment of sales structure of Poczta Polska SA, according to data in Table 1. In the face of that, the biggest volume of sales has been achieved in universal services – items with correspondence, which generated over 86% of turnover and nearly 80% of income. Direct mailings represented 8,6% of turnover that brought about 4,3% of income. Thus, the most monopolized parts of the postal market have given to the public operator almost 95% of turnover and over 84% of income. This means that the dominant position of the entity is very strong. In addition, looking carefully at the described trends, it can be seen that this dominant position have not been changing so much as others, more competitive areas of activity. It can therefore be concluded that the public operator - Poczta Polska SA, acting in the competitive area, does not easily share the field with challengers. What is more, its market power is still very strong and only decisive actions of legislator or control

bodies may make this market more competitive. The following section of this study will be devoted to the topic of possibilities in this domain.

The changes in the postal law and limiting a dominant position

The postal law in Poland, as it was mentioned above, is regulated either by national regulations (Postal Law Act, 2008) or the regulations coming from European Union³. The rules for postal operators in Poland have been changing along with other legal acts entering into force and with opening new markets. In particular, in the context of a competitiveness increase, it is essential to include the latest changes of Polish postal law, which are to introduce the full internal market in European Union and to open internal markets. Those changes are introduced in our country by the amendment of the Postal Law Act from the end of 2012 (Postal Law Act, 2012).

According to the act, the aim of the Postal Law Act is to limit the monopoly of Poczta Polska SA. However, instead of that, there was an additional strengthening of its position. The four main areas that sanction additional tools of maintaining dominant position in the market should be mentioned. Those are (Monopol na lata 2012. P A5):

- the VAT exemption for mass services performed by operator,
- the legal value of the timestamp,
- Exclusive right to handle transfers of funds from ZUS, KRUS, MOPS and others,
- The introduction of a compensation mechanism.

The VAT exemption in mass services performed by Poczta Polska SA puts this operator in a more favourable situation than the other members of market – the competitors (Operatorzy pocztowi, 2012). The fact that private entities pay VAT makes their services more expensive by about 23%. What is more, the public operator uses this possibility also to its new products such as: ‘Przesyłka Aglomeracyjna’ and ‘The made – to – measure service’, which are offered to chosen clients. The representatives of Nationwide Employers Association of Non – Public Postal Operators (OZPNOP)

³ There are three Directives of the European Parliament and Council, which regulate the postal services market in the European Union: Directive 97/67/WE of 15th December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (so called ‘First Postal Directive’). Directive 2002/39/WE of 10th June 2002 amending Directive 97/67/WE with regard to the further opening to competition of Community postal services (so called ‘Second Postal Directive’). Directive 2008/6/WE of 20th February 2008 amending Directive 97/67/WE with regard to full accomplishment of the internal market of Community postal services (so called ‘Third Postal Directive’).

claim that to the consignments within those services should be applied a 23% tax rate. As a result, the prices of services performed by the Polish Post Office might be considered as dumped prices or unjustified public aid, which should not be allowed.

The monopoly of timestamper's legal value is the next privilege which is maintained by the act introduced in 2012. At the first glance, it seems to not be such a significant privilege. However, taking into account the whole correspondence addressed to many different kind of institutions, including courts, the monopoly of Poczta Polska SA on such kinds of correspondence is clearly visible. It is additionally strengthened by the fact that private operators are under the obligation to deliver the proof of delivery. Not only are the costs higher, but also it extends their time. Such a solution favours Poczta Polska SA. The clients who are interested in quick delivery will be forced to use its services, sending correspondence which is to be delivered on time to the consignee.

Giving an exclusive right to make transfers of funds to public institutions such as the Social Security Institution (ZUS) or the Agricultural Social Insurance Fund (KRUS) causes that a large part of the market is transferred directly to Poczta Polska SA, without the possibility of competition. Still, a large portion of people receiving various kinds of services want to receive them in the form of cash. It causes an exclusion of potential rivals from that market and maintaining, or even strengthening the dominant position.

The final piece of the puzzle is so – called compensation mechanism. It is probably, due to its scale of action, the strongest factor strengthening the market position of the public operator. It acts as the mechanism of revenue redistribution. Although, in that case, its aim is to compensate the potential losses the monopolist may suffer from, connected with provision of universal services. The compensation will be covered from the special fund, which every operator in the market will contribute to. If the quantity of raised funds is too small, the government budget will cover part of the operator's (Poczta Polska SA) losses. Additional problems in that case are: the issue of estimation of the net cost which is the base for setting the compensation mechanism, the level of contributions levied on private operators or, ultimately, problems with verification of actual quantity of losses for the provision of universal services.

The four factors of market monopolisation mentioned above result from the legal regulations established in the Postal Law Act. The reason why such regulations are there and where they come from is difficult to be investigated. This could be triggered by the willingness to support national operator in his activity which can be called the natural monopoly. However, it is possible to be connected with particular interests and desire to stop the

competition. On the one hand, Poland has fulfilled solutions imposed by the European Union, but on the other hand, the market situation and its concentration have not changed. On the contrary, Poczta Polska SA has strengthened its position.

Conclusions

The issue of allocative inefficiency, considered in the first part of the paper, is closely linked with the problem of the law changes in the market of postal services. The premise is that the new act was to lead to better situation of competition in the market. As to economic approach, it would mean getting closer to the situation of entity effective in an allocative way.

In economical terms, it would mean getting closer to the situation of efficient company in allocative sense – the company which effectively uses available resources. Such a state is called the Pareto's balance. To put it in another way, changes in law would lead to reduction of inefficiency of either dominant entity or the market. This means in practical terms that consumers in this market would be offered lower prices. At the same time, the number of operators and the quality of their work connected with this fact, would increase. However, the situation presented above discredits the drift of changes, not only according to law, but also to economy. In terms of law, this change were to give another solutions. As to the economy, instead of destroying the monopoly (even this slow one), the main player in the market – Poczta Polska SA (stock – offering company) – has received additional mean which enable to reinforce its position without too much effort and labor input. Such assumptions make it possible to countercheck the initial hypothesis positively: the big companies functioning as far in the monopolistic market use all means – including changes in law, to maintain their positions. It leads to increasing allocative inefficiency of the entity and the market.

Next, it is essential that the example discussed here is not the only one in which the entities having big or huge market shares use law to gain some profits. Similar solutions can be found recently in the market of social insurances where the latest changes in law – relocation of funds from OFE (Open Pension Fund) to ZUS (Social Insurance Institution), have resulted with the stronger position of the national monopoly holder instead of an increase in the safety of collected financial resources. Another example is one of the biggest Polish banks, PKO BP, whose list of bank fees has included some illegal solutions, which caused additional costs to its clients while doing common transactions.

The important issue worth pointing out in this context is that the present regulations have been established for next 3 years. After that time, the new public operator in the market of postal services will be chosen. Considering the current situation, it could be said that the way it formed after changes in regulations in 2012 has caused that not only the competitive struggle of private operators from PP will be difficult. The further development of private operators ought to be also cautiously observed. The lack of access to significant number of services in the market, the exclusion from services provision (the legal value of timestamp) or financial burden with contribution towards a compensation fund are the reasons why those entities are less efficient and are put at a disadvantage in comparison with others, during the every single choice of the operator. Considering such a perspective, it can be assumed that allocative inefficiency in the whole market will be increasing. That will lead to additional losses to the society, making their prosperity worse. Only by relying on fully competitive market and equalizing public and private market abilities of operators, would it be possible to increase efficiency understood in such a way.

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