

I am giving my contribution as

Other

If “other”, please specify

Media corporation

Organization name

██████████

Main Areas of Work

Media Pluralism

Please insert an URL towards your organization’s main online or describe your organization briefly:

██

Country of origin

Poland

First Name

██████████

Surname

██████████████████

Email Address of the organization

██

Publication of your contribution and privacy settings

Anonymous - Only your type of respondent, country of origin and contribution will be published.

Organisation name, URL, transparency register number, first name and surname given above will not be published. To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.

I agree with the personal data protection provisions.

Questions on horizontal developments

Questions on developments in Member States

Member States covered in contribution [several choices possible]

- Poland

Media Pluralism - Poland

Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies.

3000 character(s) maximum

- Office of Competition and Consumer Protection (UOKiK)

It has been proven that this Office plays an instrumental role in changing the media landscape in Poland. Its President (appointed by the Prime Minister) – minister Tomasz Chróstny – has granted approval for a transaction between PKN Orlen and Grupa Polska Presse (regional press) after a surprisingly short period of review. UOKiK’s President Minister Chróstny approved the transaction in February 2021, making it hard to believe that such a short period was enough to analyse the market situation in this case. Thanks to this decision PKN Orlen is able to consolidate the media market by owning press, a press distributor, gas stations (major importance for press distribution in Poland) and by working with the newly created state-owned media house (advertisement broker). Adam Bodnar (Polish Ombudsman) asked Minister Chróstny to share with him the transaction’s documentation. Bodnar – as Ombudsman – has authorization and legally granted power to have access to such documents.

In January 2021, on the other hand, Minister Chróstny blocked the transaction between Agora and Eurozet (radio broadcaster) after one of the longest and most extensive proceedings in the history of the Office. The transaction was broadly (and unusually) commented on by the UOKiK President, as well as by the National Broadcasting Council, as being “undesirable”. Moreover, from the very outset, the transaction has been accompanied by a number of public speeches and commentaries by politicians of the ruling party. The MPs of the ruling party addressed a parliamentary question to the Prime Minister in this matter, expressing their “great concern about the planned transaction”.¹ The prolonged proceedings and the politicians’ involvement in commenting on them are making the parties to the transaction uncertain, which may affect the possible subsequent investments of foreign entities in Poland. According to Agora, the final decision of the UOKiK President is a disgrace to the Office. It protects Agora’s competitors rather than competition. It has been adopted in breach of the law and administrative procedures.

The cherry-picking and arbitrary evaluation of evidence and the economic analysis together with the fabricated theory of “antimonopoly damage” infringe the merger control standards developed both by the Polish Office and the European Union, whose regulations have inspired the Polish antimonopoly law. The UOKiK President rejected substantive arguments presented

¹ Parliamentary question no. 30317 to the Prime Minister about the sale of the shares of Eurozet sp. z o.o. to ██████████ with its registered office in Warsaw and SFS Ventures s.r.o., with its registered office in Prague (Czech Republic), date received: 15/03/2019, [link](#).

in the case and his decision is based on selectively chosen materials, cherry-picked to support a strategy adopted in advance. It is an unprecedented breach of the principles of impartiality and objectivity of the Polish Office of Competition and Consumer Protection. Agora appealed against the decision.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

3000 character(s) maximum

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Existence and functions of media councils or other self-regulatory bodies

3000 character(s) maximum

The Constitution guarantees the independence of the national media authority - the National Broadcasting Council (KRRiT). The competencies of the regulator are further specified by the Broadcasting Law. As a result of 2016, reform some of its competences were taken away and assigned to the new body – National Media Council (RMN). It is now in charge of appointing and removing management and supervisory boards of the Polish Television (TVP), Polish Radio, and Polish Press Agency. In December 2016, the Polish Constitutional Tribunal considered the exclusion of KRRiT from the process of appointment of the public media’s management as unconstitutional (ruling still not implemented).

The government published proposed amendments to the Anti-Trust Act (as part of the implementation of an EU directive). These changes will give UOKiK’s President more tools to influence the media market.

The amendments provide for:

- extension of the range of possibilities of the UOKiK President gaining access to information – among other things, tracking cash and data flows;
- the possibility of using controlled purchase;
- competencies to block websites – among other things, ordering that an Internet domain be deleted, contents be deleted, access be restricted, an Internet interface be turned off;
- extension of search possibilities.

The draft act provides for all the measures listed in the directive being implemented – however, they are gradable in EU law. The draft amendments to the Anti-Trust Act does not provide for such a mechanism. It will be possible to block a website without a court judgement – blocking is available as one of the planned measures – on a par with them. The condition stating that there must be a violation of collective consumer interests may be interpreted in a broad sense (see Art. 24 of the Act on Competition and Consumer Protection). In view of the fact that business is moving over to the Internet, a sanction which consists of closing a website or restricting its activities is very severe – especially with the lack of grading or any

general clause. The measures, as they are worded now, give officials broad discretionary powers.

Transparency of media ownership and government interference
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The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

3000 character(s) maximum

It should be noted in particular that during the reign of the Law and Justice party, State authorities, and companies owned by the State Treasury withdrew practically all orders for announcements and advertising spots from channels other than those favouring the Polish government. These actions appear to constitute a State boycott against the other channels. This, for obvious reasons, is a blow to the revenues of independent media and therefore hinders their operations.

Several hundred thousand readers of “Gazeta Wyborcza” have been deprived of access to (paid) announcements about the Coronavirus. Previously, free-of-charge government announcements were placed in “Gazeta Wyborcza” – following the letters from Minister M. Dworczyk in which he asked for support for the State in providing information about the epidemic. Such government measures have resulted in depriving the readers of “Gazeta Wyborcza” of access to information.²

Another example of actions that may potentially have a negative financial effect is the establishment of the State media house Sigma Bis, the actions of which may additionally lead to further outflow of advertisers from private to State – or pro-Government – media. Sigma Bis has begun taking over the provision of advertising intermediation services to State Treasury companies and government-related entities. The entities operating on the telecommunications market or on markets which require obtaining a license to function may, in a way, be forced to move over to Sigma Bis from independent, private media houses. As a result, independent media may lose the advertising budgets of large private entities.

The acquisition of a press distributor (Ruch) by the PKN Orlen gives it a tool to potentially decide about what publications will be distributed. On 3/11/2020, PKN Orlen announced that Ruch's acquisition by the concern might already be finalized – once proceedings for an arrangement with Ruch's creditors have been conducted, which has been confirmed by the court. The final decision of the court enables PKN Orlen to close the acquisition of Ruch.

² For the best analysis of Advertising expenditures of state-owned companies (Poland 2015-2020), see Professor Tadeusz Kowalski’s [Report](#)

On the other hand, there are attempts at imposing additional burdens on the media, such as the tax on advertisements payable by the media houses and not by the advertisers. The newly announced ad revenue tax would be a powerful blow to free media. Being the primary source of income for most independent outlets, advertising revenue is already severely limited because of the pandemic-induced economic downturn. Imposing additional financial costs on them would undoubtedly lead to layoffs, making it considerably more challenging to continue with the already underfunded efforts of investigative journalists. The duty would burden all independent entities on the market and would be more harmful to companies previously deprived of revenue from the advertisements of the State Treasury companies, which usually have the largest budgets. Polish media groups halted news coverage on February 10th in protest at advertising tax.

Onet (one of the leading web portals in Poland) got to the information about PKN Orlen’s intent to takeover Gremi Media (publisher of: “Rzeczpospolita”). In November 2020 information was publicized, concerning the ruling party’s willingness to take over TVN24. According to press reports, a former PiS spokesman (A. Hofman) was to have proposed a businessman (L. Czarnecki) participation in the takeover of TVN24 by a State-owned entity.

Rules governing transparency of media ownership and public availability of media ownership information

3000 character(s) maximum

The legal framework on media ownership transparency is not equally applicable to all media actors.

Adam Bodnar (Polish Ombudsman) asked Minister Chróstny to share with him the transaction’s documentation of Polska Press takeover by PKN Orlen. But he was denied such information. Bodnar – as Ombudsman – has authorization and legally granted the power to have access to such documents.

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

A journalist, Katarzyna Markusz, was interrogated by police after having written that “Poles need to accept that they had participated in the Holocaust”. An anonymous reader had notified them, out of concern that her words might insult the Polish nation, a crime under Polish law; the case was eventually shelved. Photoreporter Konstancja Nowina-Konopka, was also summoned by police to explain her presence at a demonstration; the police were concerned it might have violated anti-pandemic regulations. And a court in Szczecin ruled that local journalist Rafał Remont had slandered a local mayor by asking him a question about possible conflict of interest; the court ordered the journalist to apologize.

In cases regarding “Gazeta Wyborcza”, a judge who had unsuccessfully sued the paper for slander in the haters’ case has demanded the dismissal of the paper’s attorney Piotr Rogowski from his professional organization, which would disbar him: he disagreed with the attorney’s wording in response to the suit. Photoreporter Agata Grzybkowska, was fined for alleged assault on a policeman by the use of flash when taking a photo of him during a demonstration; the prosecution has appealed the verdict as too lenient. Police aggression against clearly identified Gazeta Wyborcza reporters, Jędrzej Nowicki and Maciej Jaźwiecki, during their coverage of the demonstration remains unpunished; the paper has officially protested. And on a Catholic priest’s YouTube channel, “Gazeta Wyborcza” reporter Piotr Żytnicki has been the object of systematic insults for his sexual orientation,; the journalist had covered the priest’s refusal to submit to ecclesiastical authorities, which declare themselves powerless against him.

Gazeta Wyborcza's journalist was detained while covering the recent protest against the restrictions of abortion. *Other journalists have been shot in the face by the police with rubber bullets; force was used against them (Independence March – Renata Kim, Newsweek).*

Access to information and public documents

3000 character(s) maximum

Polish journalists are regularly denied access to public information, public figures, and business leaders of state-owned companies, in violation of the Polish Freedom of Information Act.

Access to public information is critical to the journalistic mission to inform. A journalist’s right of access to public information is embedded in Art. 61 of the Polish Constitution, which stipulates a citizen has the right to obtain information about activities of organs of public administration and about persons holding public functions. The procedure for ensuring access to public information (including for journalists) is regulated in the Freedom of Information Act of 2001. The Act defines persons and institutions obliged to provide access to public information, including public authorities and their organs, entities funded or

subsidized by the government and entities representing state legal persons. Access to information not included in the definition of public information in the above Act is regulated by the Press Law of 1/26/1984.

After taking power in 2015, PiS placed party representatives in leadership positions across state agencies, state-owned companies and other public functions. These entities, led by either PiS politicians or its affiliates, immediately started to pursue non-state owned, independent media. They cut off access of these media to sources of current information, which is critical to its functioning. Gazeta Wyborcza’s journalists’ requests for interviews or commentary on current events have been invariably rejected, and their access to legally guaranteed public information has been barred.

Most recently Stanislaw Kluzinski, a journalist with the online investigative platform OKO.Press, was denied entry to a conservative party convention (despite obtaining formal accreditation) after the site reported that Poland’s largest news portal was coordinating pieces with the Minister of Justice before publishing.

- The ruling party, PiS, rejects all requests for information.
- The Polish National Foundation, an entity established and financed by state-owned companies, refuses all inquiries from journalists.
- The National Bank of Poland refuses all requests for information relating to the recently exposed corruption affair in KNF.
- The Ministry of Defense routinely does not respond to inquiries about its activities – not just on substantive issues of national security, but administrative requests.
- In practice, all Ministries, offices of central administration and local offices of state authorities block or hinder journalists’ requests for information. Occasionally, media will get responses after several requests, but by then (sometimes several weeks or a month after the inquiry) it is out-of-date and not useful, particularly in the era of the internet, when speed of information is key.
- State-owned TV (TVP SA) systematically rejects all requests for information.
- Journalists’ requests for information are routinely rejected by the Prosecutor General’s Office. Prosecutorial offices refuse to inform Agora’s journalists about which prosecutors head up which investigations, and which are the supervising prosecutors, including the members of the prosecutorial team investigating the Smolensk accident.
- Journalists were prevented from participating in conferences (Andrzej Duda’s conference before presidential elections 2020).

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

3000 character(s) maximum

Lawsuits against independent media, used as an instrument of harassment, have increased markedly under PiS. While the vast majority of these are frivolous and are ultimately dismissed, they use resources that the independent media could better use elsewhere and place a chill over independent reporting. Independent media outlets have been inundated with formal requests for corrections, civil lawsuits (e.g., libel), and cease and desist letters addressed to journalists demanding payment of damages for alleged wrongs (e.g., actions from the Attorney General and the Justice Minister). *Gazeta Wyborcza* and its publisher, ██████████ have been the subject of civil actions by government agencies and politicians in connection with the publication of press articles since PiS came to power, for infringement of personal rights.³ **Gazeta Wyborcza alone has more than 55 SLAPP lawsuits).**

During the “Evening News” on TVP and in other TVP information programmes, materials are shown which are aimed at discrediting its opponents (i.e. the TVN station, “Gazeta Wyborcza” and Agora, the RASP concern and the publications it owns) and their journalists. The competition is labelled, among other things, a “fake news factory” (material of 16/04/2020).

Other - please specify

3000 character(s) maximum

- Changes in legal regulations concerning media

The examples of State’s legislative activities given below, especially blatant attempts to amend the law, would give the Government tools to impact the operations of media companies on a large scale.

In 2020, the government published a draft of the Electronic Communications Law. Art. 99 (6) of the Electronic Communications Law authorizes the President of UKE (Office of Electronic Communications) to make changes in the allocated frequency reservations in a given frequency range by replacing the reserved frequencies with frequencies with similar properties. A radio brand is built by, among other things, linking it to the frequency allocated. A sudden change made by the regulator may lead to the deterioration of the broadcaster’s financial position. The possibility to change the assigned frequencies “so as to ensure order in frequency management and increase the effectiveness of the concessions being used” is

³ It is important to recognize that the nature of these cases under the PiS government is markedly different for the defendants given the changes to the judiciary over the past several years. As long as verdicts were passed by independent judges, objectivity could be expected regardless of the plaintiff. Today, objectivity is no longer assured. Many of today’s presiding judges were appointed by the current Justice Minister, who is now also the Prosecutor General. Many judges face intimidation, especially when they are not seen to be following the PiS party line. Also, the judges assigned to the majority of these media cases tend to be young judges from regional courts temporarily assigned to the District Court (the first court to hear civil cases). These assignments are wholly in the hands of the Justice Minister, who decides about their duration, and from the President, who makes the decision about the appointment of these judges to higher courts. Thus, it is increasingly unlikely that civil cases of this nature, with a political context, will come before objective judges.

already a law (art. 123 (1)(10) of the Telecommunications Law (2019), but it is upheld in the newly drafted proposal against the market’s strong objections.

A discretionary decision by the President of UKE could easily make it necessary to incur substantial costs in order to adapt to it.

The first attempted amendment was to introduce a provision to the Polish law according to which a radio or television broadcasting license would be granted not always for a period of 10 years, allowing the licenses to be issued for a shorter period under two circumstances. Such a change introduces the possibility of subordinating the media to the Government by, e.g., granting licenses for consecutive yearly periods and extending the licenses according to the political decisions taken. This leads to uncertainty regarding the possibility of conducting further licenced operations by media entrepreneurs. The uncertainty over the conditions' stability for carrying out broadcasting activities poses a risk to us as a licensed broadcaster. The lack of information about the period for which a license will be extended during relicensing proceedings will weaken Polish broadcasters compared with foreign entities.

Another amendment is the introduction of regulation to the draft Act on Electronic Communications, according to which the President of the Office of Electronic Communications (UKE) will be authorized to withdraw the reservation of a given frequency if he/she decides that “excessive concentration of frequencies by an entity or a group of entities arose” as a result of a commercial transaction. It should be emphasized that the premises of the regulation are insufficiently determined, which allows for the possibility of discretionary annulment of a transaction.

- One Media Bill – repolonization/ deconcentration

On December 21st, 2020, Ministry of Culture informed that Ministry had prepared a draft of a new media bill, which would ensure pluralism of media in Poland.

Minister of Culture P. Gliński wrote that⁴:

1. The draft of the project is ready.
2. They cannot give an exact date of the submission to the Parliament.
3. The draft is not written against journalists. The bill would ensure that the media market is pluralistic.
4. Introduction of such regulations is compatible with the European and international law.

For more information, [see](#) IPI’s latest report on Poland (February 2021).

⁴ <https://www.sejm.gov.pl/sejm9.nsf/InterpelacjaTresc.xsp?key=BWJKEA&view=1>