



Republic of Poland

Office of Electronic Communications

# The procedure of dispute settlement



# 1. Introduction

## **Genesis of disputes:**

- Obligatory cooperation
- Avoiding/questioning obligations
- Interpretation disputes – extending, limiting regulatory obligations

## **Basic rules of settling disputes:**

- Adversarial system/inquisitorial system
- Subsidiarity of regulatory intervention
- Priority of common agreement

The procedure of dispute settlement is governed by the general provisions concerning administrative procedure with respect to specific provisions.



## 2. Negotiations

The obligation to negotiate encourages administrators to discuss the terms and conditions of access.

Negotiations must be undertaken before engaging a regulatory authority in a dispute. Upon this condition the principle of subsidiarity of regulatory intervention is preserved. Settling the dispute is possible only after a futile attempt at reaching an agreement through negotiations.

The scope of particular dispute investigated by regulatory authority is determined by the scope of negotiations concerning this dispute.



### 3. Negotiations in practice

Negotiations are governed by civil law, however in the course of procedure concerning the dispute settlement negotiations are less formal. The regulatory authority is not involved in the dispute at the stage of the negotiations.

Operators present their negotiating positions in writing or arrange meetings to negotiate in person.

A common practice among operators is to initiate negotiations only to meet the conditions enabling them to request the regulatory authority to solve the dispute.



## 4. Time limit for negotiations

The President of UKE can determine the closing date of the negotiations at the written request of each party or ex officio.

The essence of determining the time limit for completion of negotiations is to enable the request for resolution of the dispute by the regulatory authority.

Time limit for completion of negotiations cannot be longer than the statutory period of 30 days, after which the parties are able to submit their request for resolution of the dispute by the regulatory authority.



## 5. Initiation of the procedure

**The procedure may be initiated by the regulatory authority *ex officio* if:**

- it is necessary in the interests of the subscribers or end-users

**The procedure may be initiated at the request of the operator if:**

- 30 day period for completion of negotiations has expired
- Time limit for completion of negotiations determined by the regulatory authority has expired
- one of the parties has refused to enter into negotiations
- one of the parties has refused to grant access



## 6. Dispute settlement

### **Main substantive conditions regarding dispute settlement:**

- interest of end-users
- obligations imposed on the parties
- promotion of modern telecommunications services
- public interest including environmental protection

These conditions stipulate a wide range of discretion to the regulatory authority.



## 7. Administrative decision

The decision is subject to a consultation procedure.

The statutory time limit for issuing a decision concerning the settlement of the dispute between is 90 days. It is to be considered as a recommended time limit.

Terms and conditions regarding access to infrastructure laid down in the decision replace the agreement and are subject to immediate execution.

The parties are free to change the terms and conditions regarding telecommunications access laid down in the decision by signing an agreement.





## 8. Administrative decision

Decision of the President of UKE is binding for legal successors of the owner and usufructuary and other entities which operate the land or building.

Telecommunications access agreement or decision of the President of UKE are a basis for making an entry in the land register.

The decision may be appealed to a court of general jurisdiction in matters of competition and consumer protection.



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## 9. Procedure for granting right of way

Obligation to enter into an access agreement within 30 days from the date of submitting a request by telecommunications entrepreneur.

In case of disputes, provisions regarding expropriating from the land are applicable (Act of 21 August 1997 on real estate management).



## 10. Procedure for granting right of way

Each party has the right to fill the request for determining conditions of the right of way to the competent local authority;

The local authority by means of an administrative decision, gives permission for placing telecommunications infrastructure on the lands and conducting cables and wires;

The draft of the decision is agreed upon by the President of UKE.



## 11. Procedure for granting right of way

The decision of local authority may be appealed to the Regional Administrative Court within 30 days from the date of its notification;

If the party is not satisfied with the President of UKE's opinion on the draft of the decision, it has the right to:

- request for revising the opinion and then
- appeal to the Regional Administrative Court.



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# Questions & answers