

# A refusal to grant access to a grid within the provision of crude oil transfer services as an example of a prohibited abuse of a dominant position in the EU and Polish competition law<sup>1</sup>

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**Abstract:**

**Aim:** The paper discusses cases in which a refusal by an energy enterprise to connect other enterprises to the network is treated as a prohibited abuse of the enterprise's dominant position and, equally, will represent behavior prohibited by art. 12 of the Treaty on the Functioning of the European Union and by art. 9 par. 2 item 2 of the Competition and Consumer Protection Law as well as legal consequences of such refusal. It is important to pinpoint such cases since the EU sectoral regulation does not provide for obligating any undertakings which manage and operate oil pipelines to enter into contracts with other undertakings such as contracts on connecting into their network or contracts on providing crude oil transfer services. Conditions for accessing oil pipelines and selling their transfer capacities are determined by the owners of the networks: private oil companies in the countries across which the pipelines are routed. These conditions are not governed by the EU law. Furthermore, the very obligation of connecting other entities to own network by energy undertakings operating in the oil transfer sector in Poland will only arise from generally applicable provisions of the Polish competition law.

**Design / Research methods:** The purpose of the paper has been reached by conducting a doctrinal analysis of relevant provisions of Polish and EU law and an analysis of guidelines issued by the EU governing bodies. Furthermore, the research included the functional analysis method which analyses how law works in practice.

**Conclusions / findings:** The deliberations show that a refusal to access the network will be a manifestation of a prohibited abuse of a dominant position and will be a prohibited action always when the dominant's action is harmful in terms of the allocation effectiveness. It will be particularly harmful when delivery of goods or services objectively required for effective competition on a lower level market, a discriminatory refusal which leads to elimination of an

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<sup>1</sup> This paper was written within the research project financed by the National Science Centre No.DEC-2013/08/A/H5/00642.

effective competition on the consequent market, a refusal leading to unfair treatment of consumers and an unjustified refusal.

**Originality / value of the article:** The paper discusses the prerequisites which trigger the obligation to connect entities to own network by energy undertakings operating in the oil transfer sector. The obligation has a material impact on the operations of the oil transmitting undertakings, in particular on those who dominate the market. The regulatory bodies in the competition sector may classify a refusal of access to own network by other enterprises as a prohibited abuse of the dominant position, exposing such undertakings to financial consequences.

**Implications of the research:** The research results presented in the paper may be used in decisions issued by the President of the OCCP and in judgement of Polish civil courts and EU courts. This may cause a significant change in the approach to classifying prohibited practices to prohibited behaviour which represent abuse of the dominant position. The deliberations may also prompt the Polish and EU legislator to continue works on the legislation.

*Keywords: prohibited abuse of a dominant position, competition law, the EU law, crude oil transfer services, refusal to grant access to a grid.*

JEL: K21, K23

## 1. Introduction

The sector specific EU law introduces grid operators' duty to provide access to electricity (Article 32 to the Directive of the European Parliament and the Council 2009/72/EC of July 13, 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC OJ 2009, L211/55) and natural gas grids (cf. Articles 32–35 to the Directive of the European Parliament and the Council 2009/73/EC of July 13, 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/55/EC OJ 2009, L211/94). Meanwhile, there are no provisions that would oblige undertakings operating and using oil pipelines to enter with other undertakings into agreements on the connection to the grid or the agreements on the transfer of crude oil (cf. Pokrzywniak 2013: 27 ff). The lack of such regulations is a consequence of the fact that, in the European Union, the crude oil market, as a rule, is open and the movement of crude oil and petroleum products is free and takes place without major restrictions (cf. Directive of the Council 2006/67/CE of July 24, 2006 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, EU OJ 2006, L 217/8; Directive of the Council 2009/119/CE of September 14, 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, EU OJ 2009, L 265/9; Regulation of the Council (CE) No. 2964/95 of December 20, 1995 introducing registration for crude oil imports and deliveries in the Community, EU OJ 1995, L 310/5; decision of the Council of December 20, 1968 on the conclusion and implementation of individual agreements between

Governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products, EEC OJ 1968, L 308/19; Directive of the Council of July 24, 1973 on measures to mitigate the effects of difficulties in the supply of crude *oil* and *petroleum* products, EEC OJ 1973, L 228/1; Decision of the Council of April 22, 1999 regarding a Community procedure for information and consultation on crude oil supply costs and the consumer prices of petroleum products, EC OJ 1999, L 1108). Even certain issues related to the insufficient condition of connections between pipelines from Western and Eastern Europe do not necessitate the extension of regulatory restrictions, including access restriction, typical of electricity and gas markets to the crude oil sector. It is also noteworthy that the crude oil sector has not been covered by the provisions of the Treaty Establishing the Energy Community (the Treaty signed in Athens on October 25, 2005). Access conditions to oil pipelines and the sales of their transfer capacities are determined by the grid owners themselves, private oil companies in the states where the grid is located and are not regulated by the EU law (Bisgaard Pedersen et al. 2009: 15–16).

## **2. Refusal of connection to the grid as a conduct prohibited by the Article 102 TFEU**

The duty to connect other entities to one's own network applicable to energy undertakings dealing with the transfer of oil may be deducted only from the general competition law. An undertaking's refusal to connect other businesses to the grid can, in some cases, be classified as an abuse of dominant position, a conduct prohibited by the Article 102 of the Treaty on the Functioning of the European Union (TFEU). Article 102(b) TFEU introduces a ban for the undertakings which enjoy dominant power on the internal market on abusing such a position by restricting production in a manner detrimental to consumers (one example of such a practice is the refusal to supply).

The refusal to supply, classified as an anti-competitive practice, can be divided into at least two basic groups. The first group consists of refusals to supply occurring when the dominant enterprise does not compete with its client on any downstream market, but simply supplies them with certain products which are subsequently independently commercialized by the buyers (cf. judgment of EC of February 14, 1978 in the case 27/76 United Brands Company and United Brands Continentaal BV v. Commission, [1978] ECR, p. 207, items 182–191). The second group of anti-

competitive practices are refusals to supply when the dominant undertaking refusing to supply and the buyer (client), who has been refused supplies, are competitors on the downstream (lower level) market. It means that undertakings acting on a market which requires certain inputs generated on the upstream (higher level) market to produce specific products or provide certain services (e.g. telecommunications, postal, energy supply or railway transport services) are refused access to such inputs (cf. judgement of EC of March 6, 1974 in joined cases 6 and 7/73, *Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents Corporation v. Commission*, [1974] ECR, p. 223, item 25).

The Communication from the European Commission of February 9, 2009 laying down the guidelines on the Commission's enforcement priorities in applying the Article 82 of the EC Treaty (currently Article 102 TFEU) to abusive exclusionary conduct by dominant undertakings (EU OJ of 2007, C 45/7) provides that when a dominant undertaking (including a chain) refuses to supply a specific product being an input for the downstream market (e.g. refuses access to an oil pipeline) to an undertaking acting as its competitor on the downstream market, the conduct is classified as prohibited by the Article 102 TFEU as an abuse of the dominant position. Such a situation occurs if the following four premises are satisfied: 1) the refusal pertains to the supply of goods or services "objectively necessary" to effectively compete on a lower level market; 2) the refusal may result in the elimination of effective competition on the downstream market; 3) the refusal may cause consumer harm; and 4) the refusal is not sufficiently justified (cf. item 81ff. of the European Commission guidelines of February 9, 2009 referred to above).

The first premise of the "objective necessity" of goods or services for effective competition on a lower level market is met if there is no real (or at least potentially existing) substitute for the product to which the dominant undertaking is refusing access and which is used as a production input on the downstream market (judgement of the Court [previously: First Instance Court] of June 12, 1997 in the case T-504/93 *Tiercé Ladbroke SA v. Commission*, ECR [1997], p. II-923, item 131). In consequence, it is necessary that there be no actual or potential substitute for the product (service), rather than a requirement for the product (service) as a factor that determines production on the downstream market. Such a situation occurs only when the dominant undertaking is the only source of that product (cf. judgement of CJ in joined cases C-241-242/91 P *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v. Commission*, ECR [1995], p. I-743, item 53) and when certain technical, legal or economic obstacles occur that would prevent or make

the duplication of the product by the undertaking seeking access completely irrational (judgement of CJ of November 26, 1998 in the case C-7/97 Oscar Bronner GmbH & Co. KG v. Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG, Mediaprint Zeitungsvertriebsgesellschaft mbH & Co. KG and Mediaprint Anzeigengesellschaft mbH & Co. KG, ECR [1998], p. I-7791, items 44–45). In such a case, it would be necessary to establish, on case to case basis, whether competitors seeking access have the possibility to effectively copy the production input generated by the dominant undertaking in a foreseeable future, that is the possibility of creating an alternative source of effective deliveries in a near future, allowing the competitors to exert competitive pressure on the dominant undertaking on the downstream market (cf. item 83 of the European Commission guidelines of February 9, 2009). Otherwise it would be impossible to conclude that a specific product or service to which a competitor is seeking access is “objectively necessary” and the refusal to deliver will not be classified as an anti-competitive practice.

Likewise, one would need to conclude that no anti-competitive practice occurs when a product or service cannot be realistically duplicated by competitors, but the undertaking refusing to deliver is not its only provider. In such a case, alternative sources of the product exist on the market. However, it would be necessary for the alternative supplier to express actual readiness to deliver the product to interested undertakings.

To conclude that the infrastructural grid owned by a dominant grid operator serving as an input on the downstream market (the market of providing services to the end users) is objectively necessary for the effective competition on the downstream market, it is also necessary to determine that there is no real or at least potential substitute for the grid at a given time that would enable the undertaking seeking access to reach the end clients. Such a situation may occur when the grid operator functions as a natural monopolist. In such a case, the scale effect of the existing grid is large enough to practically prevent economically rational construction and operation of an alternative infrastructural grid (Szydło 2010b: 67–68).

Another premise that needs to be met in order to conclude that the refusal to supply a specific product to a competitor on a downstream market is a prohibited abuse of a dominant position involves the elimination of the effective competition on the downstream market as a result of the refusal. In consequence, if a product is objectively necessary for effective competition on a downstream market, the refusal to deliver the product to a competitor (by a dominant undertaking, including a dominant grid operator) may contribute to the elimination – either immediate, or

postponed in time – of effective competition on a downstream market. Effective competition will be eliminated faster if the dominant undertaking has a larger share in the downstream market and its competitors on the lower level market are fewer alternative options. The bigger the share of the dominant undertaking in the downstream market, the stronger its position relative to the potential of its competitors on that market, and the more pronounced the consequences for a broader part of its competitors on the lower level market. In such a case, it is also more likely that the demand that could be satisfied by the competitors whose access to the market has been foreclosed would be lost by them to the benefit of the dominant undertaking (cf. item 85 of the European Commission guidelines of February 9, 2009).

The third premise that must be met to classify a dominant undertaking's refusal to supply a specified production input to its competitors as an abuse of the dominant position is a harm that the refusal to supply can cause to consumers on the downstream market. This harm may be either immediate or long-term. In consequence, it becomes necessary to prepare a forecast on the future values of certain factors on the downstream market from the perspective of consumer interests, such as: prices of end products, the supply of such products, their quality, potential appearance of new, more innovative products and technologies that would satisfy consumer needs in a better way. The most serious harm that can materialise itself as a result of refusal to deliver by the dominant undertaking (including grid operators) is the increase of consumer prices resulting from the elimination of competition from the downstream market. Furthermore, major harm may also occur when competitors whose access to the market has been foreclosed are prevented, as a result of the refusal, from launching innovative products and services on the market or face difficulties in progressing with their innovative work (cf. items 86–88 of the European Commission guidelines of February 9, 2009).

In the case of the crude oil sector, consumer harm could involve the decreased volume of crude oil reserves and higher prices of crude oil storage, possibly resulting in the increased prices of petroleum products, causing harm to the end users of the products – consumers. Moreover, the decrease of the crude oil storage volume would definitely have its adverse impact on the energy security of the state, causing indirect harm to consumers.

Finally, the fourth premise for classifying a refusal to supply as a prohibited abuse of a dominant position is the failure to sufficiently justify the refusal. Possible reasons justifying the refusal to supply, meaning that no abuse of dominant position occurs (even if the foregoing

premises are met) include: objective necessity and benefits involving improved effectiveness (cf. item 28 ff. of the European Commission guidelines of February 9, 2009). An objective necessity involves certain external factors that justify the conduct of the dominant undertaking, including the need to protect health and ensure security, if such a necessity is inherent to the nature of a product. On the other hand, benefits concerning effectiveness are manifested in the form of certain possible advantages for consumers (e.g. technical improvements instrumental to the quality of goods or the decrease of production or distribution costs). In both cases, the conduct of the dominant undertaking must be proportional to the pursued goal, while the benefits arising of the refusal to deliver must be higher than the harm caused to consumers (cf. Albors-Llorens 2007: 1727 ff).

In the case of refusal of access to a grid, the dominant undertaking may rely on the objective necessity when, in particular, the capacity of a specific grid (i.e. its transfer capacity) has already reached its limit, or when other reasons suggest that granting access to the grid to new undertakings would put the safe operation of such a grid at risk. However, in this context it is important to note that when the refusal of access to a grid is motivated by the capacity reasons, the dominant undertaking must pay particular attention to the equitable allocation of the transfer capacity within the grid, applying substantively justified criteria to the selection of undertakings to be granted access to that grid. In this respect, priority can be given to the enterprises which have previously proven to be credible users of the grid or play a particularly important role in the provision of specific services to the end users with the use of that grid (Frenz 2006: 515).

A dominant undertaking may rely, however, on effectiveness as a justified reason when it is able to prove that by refusing the access it gains additional funds that will not only compensate for the past investments made in the grid, but will also stimulate further infrastructural investments (e.g. the extension of the existing grid, modernization of the grid) or are the basic economic factor without which further investments would not be possible. In consequence, a refusal of access to a grid may be justified by the dominant undertaking by the expected benefits involving the improved dynamic effectiveness, on condition that these benefits will be, to a relevant extent, allocated to consumers who will experience the positive impact of technical improvements and technological innovations, with reservation that these expected benefits in terms of effectiveness are higher than the potential negative consequences that a refusal of access may bring about for consumers, especially in the short-term perspective (for instance in the form of higher prices for services supplied using the grid). The dominant grid operator may also claim that the refusal to grant access

to the grid would motivate its competitors to extend their own grid infrastructure which is bound to boost the dynamic effectiveness on the market thus benefiting consumers, while granting the access to the dominant undertaking's grid, especially if such access would be gained too easily, on very favourable conditions, would discourage competitors from pursuing their own investments. In consequence, the latter would find it more profitable to capture benefits from the already existing grid rather than invest in new infrastructure which obviously may turn out to be disadvantageous to consumers in the long run.<sup>2</sup>

The foregoing discussion supports the view that in most cases the response to the question whether a refusal of access to the grid can be classified as a prohibited abuse of a dominant position depends on the balancing of the harm that the refusal may cause with respect to the allocation effectiveness (e.g. higher prices of services) and the expected benefits for the dynamic effectiveness: higher investments and innovation (Szydło 2010b: 70–71).

Furthermore, one must note a specific case of a prohibited refusal to deliver, that is a discriminatory refusal occurring in a situation when a grid operator refuses access to the grid with respect to one undertaking while granting the access to another undertaking, assuming that the factual situation of both undertakings is the same (cf. Szydło 2010a: 168–169).

### **3. A refusal to connect to a grid as an abuse of a dominant position in the meaning of Article 9(2)(2) of the Competition and Consumer Protection Act**

Energy grid operators have a general duty to connect other entities to their grids under the Article 7(1) of the Energy Law of April 10, 1997 (consolidated text: Dz.U.[ Journal of Laws] of 2006, no. 86, item 625 as amended). Pursuant to this provision, “an energy undertaking dealing with the transfer or distribution of gas or electricity must enter into a grid connection agreement with entities applying for the connection to the grid pursuant to the rule of equal treatment insofar as it is technically and economically feasible to connect such entities to the grid and supply such fuels or power, and provided that the applicant meets the conditions for the connection to the grid and the receipt of the fuels or power. If an energy undertaking refuses to enter into an agreement

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<sup>2</sup> In this respect, EU member states' competition authorities should rely on the premises analysed in this paper and laid down in Article 102b) TFEU (cf. Modzelewska-Wąchal 2002: 105; Jurkowska 2009: 641).



on the connection to the grid, it must immediately notify the President of the Energy Regulatory Office and the entity concerned in writing, specifying the reasons for such a refusal". However, the wording of the foregoing provision does not suggest that the obligation of energy grid operators to connect other entities to their grids applies also to energy undertakings dealing with the transfer of crude oil and operating oil pipelines.

The obligation laid down in the Article 7(1) of the Energy Law pertains only to such energy undertakings which deal with the transfer of "energy". The term "energy" in this context is defined by the Article 3(1) of the Energy Law which provides that "energy" means the "processed energy in any form". However, this definition is not entirely clear and precise. It is also affected by the classic definition *idem per idem* error: "energy" means "energy (...)". However, we can conclude that the term "energy" applies only to such carriers (raw materials) which have been "processed" in a specified way. Consequently, from this perspective, energy is limited to such energy carriers that consist of raw materials which have already been technologically processed and, as a result, gained new physical-chemical properties of significance in the context of their function as energy sources. In consequence, raw, unprocessed products are not classified as "energy" pursuant to this act if they are to become sources of energy after subsequent technological processing. Crude oil is an example of such a raw material which is not "energy" in the meaning discussed in this paper. It requires processing by means of distilling, refining or crystallization to become converted into products that are typical energy sources, such as petrol, diesel or kerosene. In consequence, since crude oil is not classified as "energy" in the meaning of the Energy Law, the obligation laid down in Article 7(1) of the Energy Law does not apply to the energy undertakings dealing with the transfer thereof, since it is applicable only to the undertakings dealing with the transfer of "energy".

Even if we concluded that the term "energy" is inclusive of crude oil, in particular based on the fact that to transfer the oil by pipelines it is necessary, in a way, to "process" it in the meaning of Article 3(1) of the Energy Law for the purposes of transportation, energy undertakings dealing with the transfer of crude oil would not be covered by the obligation laid down in the Article 7(1) of the Energy Law to connect other entities to the grid. One needs to emphasize that the obligation laid down in the Article 7(1) of the energy Law applies only to the energy undertakings dealing with "transfer" or "distribution", with reservation that the legal definitions of "transfer" and "distribution" included in the Energy Law unequivocally exempt the transfer of crude oil from the scope of this term. Pursuant to the Article 3(4) of the Energy Law, the term "transfer" means "the

transport of: a) gas fuels and electricity with the use of the transfer grid for the purpose of supplying them to the distribution grid or end users connected to the transfer grid, b) liquid fuels with the use of pipelines, c) heat with the use of the heat grid to the recipients connected to that grid – except for the sales of those fuels or electricity”. Meanwhile, Article 3(5) of the Energy Law provides that the term “distribution” means “the transport of: a) gas fuels and electricity with the use of the distribution grid for the purpose of supplying them to the recipients, b) supply of liquid fuels to recipients connected to the pipelines, c) supply of heat to the recipients connected to the heat grid – except for the sales of those fuels or electricity”.

In consequence, since both the legal definitions of “transfer” and “distribution” pertain to the transport of explicitly listed types of fuels or energy, i.e. 1) gas fuels, 2) electricity, 3) liquid fuels and 4) heat, and none of this types of fuels or energy includes crude oil (even if one classified crude oil as energy or fuel in the normative sense), it should be concluded that energy undertakings dealing with the transfer of crude oil with the use of pipelines do not run business involving the “transfer” or “distribution” in the meaning of the Energy Law.

However, one should ponder whether a refusal to connect to a subject to a grid in the crude oil sector could be classified as a prohibited abuse of the dominant position. Article 9(2)(2) (in conjunction with the Article 9(1)) provides that it is prohibited for one or several undertakings to abuse their dominant position on the relevant market in terms of “restricting production, sales or technical progress in a manner detrimental to their counterparties or consumers”. This practice is also inclusive of dominant entity’s conduct involving the refusal to supply or the refusal to contract (Jurkowska 2009: 640). It is noteworthy that the President of the Polish Office of Competition and Consumer Protection (UOKiK) has previously classified, for instance, a power undertaking’s refusal to allow access to its grid to other competitive companies as the “limitation of sales” of goods or services. Pursuant to the President of UOKiK, if other undertakings are deprived of the access to the grid for the purpose of running their own business, they are *de facto* prevented from running a business in this area. This is obviously harmful to these businesses which are counterparties for transfer undertakings. At the same time, consumers, recipients of fuels and energy, are also harmed because – as a result of the refusal of access to grid – they cannot exercise their right to choose a service provider. In consequence, a refusal of access to a grid, interpreted as a refusal to provide transfer services, satisfies the premises laid down in the Article 9(2)(2) of the

Competition and Consumer Protection Act (decision of the President of UOKiK of April 9, 2005, file ref. no. DOK-91/2005, OUKiK Official Journal of 2005, no. 3, item 34).

#### **4. Conclusions**

In consequence, a dominant undertaking's refusal to deliver, in particular a dominant grid operator's refusal of access to the grid, is prohibited by the Article 9(2)(2) of the Competition and Consumer Protection Act and has been classified in this way in the UOKiK President's case law. Nevertheless, it must be stated that Polish competition authorities have never comprehensively and extensively analysed the premises which, when satisfied, justify such a classification. For instance, the only premise for such a classification, such as "harm for counterparties and consumers", has not been analysed in the context of Article 9(2)(2) of the Competition and Consumer Protection Act. As a result, it has been suggested in legal literature that Polish competition protection authorities should not rely on the premises for the analogous application of the Article 102(b) TFEU in this scope (Modzelewska-Wąchal 2002: 105; Jurkowska 2009: 641). Furthermore, one must note a specific case of a refusal to supply prohibited by the Article 9(2)(2) of the Competition and Consumer Protection Act, that is a discriminatory refusal occurring in a situation when a grid operator refuses access to the grid with respect to one undertaking while granting the access to another undertaking, unless the factual situation of both entities is completely different (Szydło 2010a: 168–169).

The foregoing analysis has shown that a potential refusal of a transfer undertaking to connect another entity's installation to the crude oil pipeline operated by it could be classified as a prohibited abuse of the dominant position by that undertaking on the grounds of the Article 9(2)(2) of the Competition and Consumer Protection Act.

Similarly, a prohibited abuse of a dominant position will occur if, already at the stage of negotiating access to a pipeline, an undertaking's conduct satisfies the premises laid down in the Article 9(2)(6) of the Competition and Consumer Protection act, imposing on the entity requesting access to the grid "onerous terms and conditions of contract" in the meaning of the said provision. This paper was written within the research project financed by the National Science Centre No.DEC-2013/08/A/HS5/00642.

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Decision of the Council of April 22, 1999 regarding a Community procedure for information and consultation on crude oil supply costs and the consumer prices of petroleum products, EC OJ 1999, L 1108.

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## A REFUSAL TO GRANT ACCESS TO A GRID WITHIN THE PROVISION OF CRUDE OIL ...

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Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów, tekst jednolity: Dz.U. z 2017 r. poz. 229 (Competition and Consumer Protection Act of February 16, 2007 consolidated text: Dz.U. [Journal of Laws] of 2017, item 229).

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***Odmowa przyznania dostępu do sieci w ramach świadczenia usług przesyłania ropy naftowej jako przykład zabronionego nadużycia pozycji dominującej w UE i polskiego prawa konkurencji***

***Streszczenie:***

**Cel:** Artykuł omawia sytuacje, w których odmowa przyłączenia przez przedsiębiorstwo energetyczne innych przedsiębiorstw do sieci, będzie potraktowana jako zakazane nadużycie pozycji dominującej przez to przedsiębiorstwo i tym samym będzie stanowiło zachowanie zakazane przez art. 102 Traktatu o funkcjonowaniu Unii Europejskiej i przez art. 9 ust. 2 pkt 2 ustawy o ochronie konkurencji i konsumentów oraz konsekwencje prawne tego rodzaju odmowy. Wskazanie tych sytuacji jest istotne, bowiem unijnym prawie regulacji sektorowej nie istnieją przepisy zobowiązujące przedsiębiorstwa zarządzające i eksploatujące rurociągi ropy naftowej do zawierania z innymi przedsiębiorstwami umów o przyłączenie do ich sieci lub też umów o świadczenie usług przesyłu ropy naftowej. Warunki dostępu do rurociągów ropy naftowej oraz sprzedaży ich zdolności przesyłowych ustalane są przez samych właścicieli sieci, prywatne spółki naftowe w państwach, przez które te rurociągi przebiegają, nie będąc regulowanymi przez prawo Unii Europejskiej. Sam zaś obowiązek przyłączania innych podmiotów do własnej sieci przez przedsiębiorstwa energetyczne zajmujące się przesyłaniem ropy naftowej w Polsce wynikać będzie jedynie z ogólnych przepisów polskiego prawa konkurencji.

**Opracowanie / Metody badawcze:** Cel artykułu został osiągnięty poprzez analizę doktrynalną odpowiednich przepisów prawa polskiego i unijnego oraz poprzez analizę wytycznych wydawanych przez organy Unii Europejskiej. W badaniach uwzględniona została także funkcjonalna metoda analizy, pozwalająca badać prawo w działaniu.

**Konkluzje / Wyniki:** Rozważania pokazują, że odmowa dostępu do sieci będzie stanowiła przejaw zakazanego nadużycia pozycji dominującej i będzie działaniem zakazanym zawsze wówczas, gdy działanie dominanta będzie szkodliwym w zakresie efektywności alokacyjnej. W szczególności zaś, gdy dojdzie do odmowy dostawy towarów lub usług obiektywnie niezbędnych do skutecznego konkurowania na rynku niższego szczebla, odmowy o charakterze dyskryminacyjnym i doprowadzającej do wyeliminowania skutecznej konkurencji na rynku następującym, odmowy doprowadzającej do pokrzywdzenia konsumentów oraz odmowy nieusprawiedliwionej.

**Oryginalność / Wartość artykułu:** Artykuł omawia przesłanki, zaistnienie których powoduje powstanie obowiązku przyłączania przez przedsiębiorstwa energetyczne zajmujące się przesyłaniem ropy naftowej innych podmiotów do własnej sieci. Obowiązek ten w sposób istotny wpływa na kształt prowadzonej działalności przez przedsiębiorstwa przesyłowe, zwłaszcza te, będące dominantami na rynku. Odmowa dostępu do własnej sieci innym przedsiębiorcom może zostać zakwalifikowana przez organy konkurencji jako zakazane nadużycie przez nich pozycji dominującej, narażając ich na konsekwencje finansowe.

**Implikacje:** Zaprezentowane wyniki badań mogą zostać wykorzystane w decyzjach wydawanych przez Prezesa UOKiK oraz w wyrokach polskich sądów powszechnych i sądów unijnych, przez co może nastąpić znacząca zmiana w podejściu do kwalifikowania określonych praktyk jako zachowań zakazanych, stanowiących nadużycie pozycji dominującej. Rozważania mogą przyczynić się także do podjęcia dalszych prac przez ustawodawcę polskiego oraz unijnego.

**Słowa kluczowe:** nadużycie pozycji dominującej, prawo konkurencji, prawo unijne, odmowa dostępu do sieci, usługi przesyłania ropy naftowej

JEL: K21, K23