

MEDIATION IN ENFORCING OBLIGATIONS AND MAINTAINING LIQUIDITY OF SUPPLY IN THE CONTEXT OF PANDEMIC AND RUSSIAN-UKRAINIAN WAR

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Abstract: Recent years have been a challenging time for businesses. The pandemic and the Russian-Ukrainian war have affected business activities and shaken the trade exchange. Problems have emerged with maintaining supply chains, maintaining production capacity, rising prices, difficulties in obtaining raw materials and components, financial liquidity, being cut off from eastern markets and the outflow of Ukrainian workers. Problems are also exacerbated by sanctions against Russia, which have caused price increases in energy raw materials, metals and food, as well as time and form of transportation.

Entrepreneurs operating in the current realities are exposed to default, failure to pay on time, failure to meet obligations, changes in payment terms, setting new delivery schedules, negotiating insurance and credit terms, concluding and terminating trade agreements. Often the actions of other companies are not malicious, but are due to the fact of standstills and similar problems. Going to court is not the best solution due to the long time of hearings, costs and emerging mutual resentment. To continue operating on the same market, entrepreneurs should try to cooperate with each other and solve problems amicably. Mediation can be helpful in this regard, as it is cheaper than court trials, shorter and allows good relations and further cooperation.

The purpose of the article is to show the economic problems of entrepreneurs, to show the new behavior of producers and to indicate the role of mediation in the key activities of enterprises in the context of the pandemic and the Russian-Ukrainian war.

Keywords: *producer problems, liquidity disruptions, new consumer behavior, mediation*

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INTRODUCTION

Recent years are a very difficult time for entrepreneurs operating in the market. First, the pandemic, then the Russian-Ukrainian war caused turbulence in the system of company activity on many levels and dis-

turbed the trade exchange. Manufacturing companies in Poland faced problems related to broken supply chains, maintaining production capacity, rising prices, problems with obtaining raw materials and components (Business Insider, 2022), cutting off from eastern sales markets, changes in consumer demand and the outflow of Ukrainian workers. Smaller companies cooperating with large entities or manufacturing companies have also found themselves in a difficult situation.

Problems for companies, further disruptions, delays and price pressures are also exacerbated by sanctions against Russia, which are taking their effect on the prices of energy raw materials, metals and food, as well as the time and form of transportation. Increased transportation time means higher fuel costs and production delays (Śleszyńska, 2022). The uncertainty of operating in the market has also deepened. Market forecasts are not optimistic. The National Chamber of Commerce predicts that due to the situation in Ukraine this year the growth of Polish GDP will fall to 3.5% (last year's GDP was 5.7% in annual terms). If the conflict is prolonged, it is likely to fall to 2%, and this already means serious problems in the labor market.

PROBLEMS OF PRODUCERS IN THE CONTEXT OF THE PANDEMIC AND THE RUSSIAN-UKRAINIAN WAR

This is the third year of disruptions in global manufacturing: from raw material sourcing, through the production cycle, packaging, transportation and distribution. These disruptions have also resulted from labor shortages, government actions restricting factory work (plant shutdowns) or competition for valuable sources of supply in certain industries (Rawa, 2020). The effects of the shutdowns affected shortages of imported goods and components and their prices, so that manufacturers had to reduce production and sales. Companies' inventories have shrunk, and the companies themselves are no longer able to meet current obligations.

Businesses have experienced perturbations in all markets in the form of declining demand, disruptions to ongoing contracts and projects, lost sales, disruptions to supply chains, or the unavailability or economic unviability of other lines of production (Dz.U.U.E.C.2022.1311.1). Businesses and their partners are experiencing problems with suppliers failing to deliver components on time. Many companies have on-time contracts, so they are subject to penalties for late delivery-some are financially respon-

sible for delays (they pay a penalty for each missed delivery). Failure to deliver items delays or halts production and generates costs. It is up to the company to find a way to deliver the needed items to keep production flowing.

The decline in demand for particular commodities led companies to change their strategies and revise their supply chain - reducing supply volumes, diversifying, or disposing of goods at a lower price (Marel, Zbroja 2020).

The reduction in supply was due to decreasing demand for products such as clothing and shoes. Employees working remotely did not feel the need to dress elegantly for work - the sale of clothing decreased - mainly skirts, pants, shoes (the lower parts of the clothes invisible to the employer during remote meetings). This has affected the overflow of clothes in warehouses and their lower prices. Clothes produced in the last two years are also selling right now. Entrepreneurs are now choosing to make only necessary purchases not wanting to freeze cash in unsold goods.

Diversification is the re-branding or expansion of the production mix. Many companies had to change their form of business during the lockdown. Food service companies focused on selling take-out food, clothing companies on sewing masks and protective costumes, and so on. All this was to help companies wait out the pandemic time. The war time also took its toll on entrepreneurs. They began to notice the development of companies teaching shooting, self-defense courses, learning the Ukrainian language, publishing houses publishing newspapers and books in Ukrainian, etc.

Russian military aggression against Ukraine has affected exports and imports of products to the East (reduction of sales markets in many industries - food, furniture, energy, etc.). In connection with the European sanctions introduced in contacts with Russia, there was a significant increase in the cost of raw materials, materials and goods caused by an exceptionally high increase in natural gas prices and electricity prices (Dz.U.U.E.C.2022.131I.1). High inflation is observed in the market (in April 2022 in Poland the inflation rate was 12.4% and forecasts indicate a further increase in the prices of basic goods).

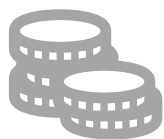
LIQUIDITY DISORDERS

Businesses are also feeling the effects of pandemonium and war in financial markets, particularly in terms of liquidity and currency fluctuations. Exchange rates are important for companies that use exports and imports. Increasing prices of currencies (euro, dollar, etc.) automatically affects the prices of fuels, energy, gas, which are imported from other countries, also on purchases of raw materials, semi-finished products and goods (importing parts or components becomes less profitable). Entrepreneurs have problems with making valuations of contracts or manufactured products. They are afraid of having to limit their activity and losing financial liquidity (Stańczak 2022).

Companies because of their disrupted supply chains generate less revenue but still have to pay their current obligations. Sometimes companies experience payment delays from counterparties (lack of timeliness in payment). The study “Business and Ukraine” conducted by TGM Research at the end of March 2022, commissioned by the National Debt Register BIG, shows that entrepreneurs operating in the market choose to (Krajowy Rejestr Długów, 2022):

- withholding payment for products or services;
- delaying payment for products or services;
- send requests for longer payment terms on invoices;
- cancel scheduled projects or orders;
- reduce the value of orders placed;
- defer scheduled projects or orders.

Suspending or postponing payments is detrimental to the entire economy and the liquidity of the company. Regulating liabilities without adequate income flowing regularly to the company may lead to loss of financial liquidity, which is connected with the inability to pay current liabilities, fuelling the spiral of payment gridlock and disrupting the continuity of deliveries, which often have to be made well in advance. Without paying current liabilities there is no possibility of receiving supplies, which translates into production standstills and contributes to a decrease in the level of confidence among companies (KRWL, 2022). Lack of timely payments worsens the financial situation of an entrepreneur, makes it impossible to carry out planned investments and leads to a loss of trust in contractors.



60% of companies experience payment delays

only 1/3 have no problems with late payments from customers



70% - the most common time for business partners to pay an invoice is up to one month after the payment deadline



57% of entrepreneurs indicated that invoices not paid by contractors account for less than 10% of the value of all documents issued



Figure 1. Financial problems of companies

Source: own elaboration based on: *Nieopłacone faktury blokują firmy, Badanie Korona-Bilans MŚP Krajowego Rejestru Długów*, <https://www.skarbiec.biz/gospodarka/firma/nieoplacone-faktury-blokuja-firmy.html>, (access: 10.05.2022).

Russia's aggression against Ukraine caused Polish businesses to lose contracts, customers, and funds overnight - many companies found themselves without orders and without money. Poland exported many products to the Ukrainian and Russian markets. Blocking the possibility of production (suspension or closure of factories and stores in Russia) and sales, then cutting off Russia from the SWIFT system showed that entrepreneurs will not receive money quickly. Few companies operating in Poland have purchased insurance against such rare risks as armed conflict or political sanctions. Only 5% of companies (about 1,000) have purchased insurance on the value of their exports (Ptak – Iglewska, 2022).

NEW MARKET BEHAVIOR OF PRODUCERS IN THE CONTEXT OF CRISIS SITUATIONS

Consequences of market perturbations in the future (Wąsiński, Wnu-kowski, 2020):

- retreat from globalization - the functioning of the previous model of organizing global value chains and concentrating production in Asia, allowed to minimize costs, however, pandemic and war revealed threats related to production, distribution, sales; the return to local markets in its actions was announced by the European Union during the creation of the Strategic Investment Mechanism, which is to encourage companies to locate production in strategic sectors in Europe,
- diversification of suppliers - basing yourself on one country, region or supplier is too risky;
- stockpiling to keep the continuity of production (previously warehousing was avoided, which gave savings); the amount of inventory will depend on the size of the company, larger companies have a centralized purchasing strategy, better inventory control and diverse supply bases - it is easier for them to control orders;
- automation of production and digitalization of work (remote work) - eliminate differences in labor costs (office space, training, workstation equipment, etc.);
- submitting unpaid invoices to debt collection companies in order to recover the necessary funds for operation;
- development of mediation for recovery of funds and negotiation of contract terms;
- state protectionism to protect the national economy and the decline in international trade volume and its share in global GDP.

MEDIATION IN ENFORCING OBLIGATIONS AND MAINTAINING LIQUIDITY OF SUPPLY

Problems in business-to-business relationships are inevitable. They arise from both the actions of entrepreneurs and markets. The more serious ones often end up in court. The court process, however, is associated with many years of disputes, the need to collect and present a large number of documents, the involvement of witnesses and experts, and court costs. The result of this confrontation does not always provide the expected resolu-

tion, but causes mutual resentment and loss of trust (Zalewski, 2020). The publicity that accompanies litigation can also damage a company’s reputation, scare off potential customers and business partners, create problems in existing business relationships and consume a lot of money. In addition, the freezing of funds for the purpose of settling liabilities may realistically threaten the liquidity of the company (Uherek-Karasek, 2022).

One method of resolving disputes between businesses is mediation.

Mediation is a confidential, effective and cost-efficient instrument for solving disputes - it enables the parties to solve their dispute satisfactorily by their own efforts and with the participation of a professional mediator, without the participation of the court (Zalewski, 2020). The number of mediations in Poland has increased in recent years in various fields. Chart 1 shows the number of mediation proceedings in business cases in the years 2006-2020.

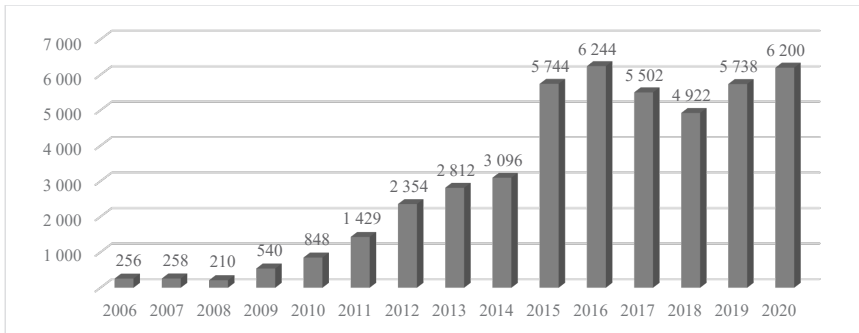


Chart 1. The number of cases in which the parties have been directed to mediation on the basis of a court order (Art. 183 §1kpc)

Source: own elaboration based on: *Mediacje w sprawach gospodarczych w latach 2006-2020*, Informator Statystyczny wymiaru Sprawiedliwości, <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>, (access: 14.05.2022).

Key attributes of business mediation include (WCAM, 2022):

- speed of proceedings - a priority in economic relations - according to the “time is money” principle - these are on average 3-5 meetings held over a period of up to 3 months (courts in Poland are inefficient, cases last for years);
- confidentiality - only the contracting parties and the mediator know about the conflict and the ways of resolving it;

- cheapness - the cheapest form of dispute resolution - the price for mediation is determined as a percentage of the value of the object of dispute, a lump sum for a fixed number of meetings or a fixed amount per hour of the mediator's work - not less than PLN 150, not more than PLN 2,000;

- the flexibility of mediation meetings/meetings being scheduled rather than appointed, allowing the time spent on mediation to fit the parties' leisure time;¹

- flexibility - meetings/mediation sessions are scheduled at times that fit the parties' free time;

- deformalisation - a neutral meeting ground, an atmosphere conducive to casual conversation;

- possibility of maintaining good relations and further cooperation - the parties to the conversation can explain to each other what was the reason for the dispute, e.g. failure to pay an invoice on time.

Mediating the enforcement of commitments and maintaining supply flow in the context of a pandemic and Russian-Ukrainian war is concerning:

- failure to meet contractual terms - this is related to production standstills and dependence on markets offering cheaper production methods or cheaper components;

- untimely payments - often related to the lack of settlement of receivables from customers, also having problems with the transfer of financial resources; lack or inability to obtain short-term credits, insolvency of the company

- default - related to delivery dates, payment dates (lack of own funds and obtaining funds from external sources of financing - conservative behaviour of banks, shareholders and investors on the market);

- changing payment terms - adjusting the timing and amount of payments to the capabilities of the companies concerned;

- setting new delivery schedules - rescheduling deliveries, negotiating penalties associated with untimely implementation of delivery schedules;

- negotiating insurance conditions - especially in the case of goods exported/imported to Ukraine or transported through a country at war, in-

¹ The amount of the fee in business mediation pursuant to Section 1835 of the Code of Civil Procedure.

suring contracts, contract amounts, payments, timeliness, etc;

- negotiation of credit terms - adjustment of credit terms to new market realities e.g. spreading the payments into additional instalments, suspension of payments for a certain period of time (credit vacations), extension of credit repayment periods etc. (Szulc-Nagłowska, 2022);

- concluding and terminating trade agreements - possibility to terminate without additional costs agreements resulting from unfavourable market conditions (cooperation with companies in Russia) or concluding additional agreements with Ukrainians residing in Poland (Uherek-Karasek, 2022).

Mediations are also conducted within companies. They concern working time of employees, taking paid vacations due to stoppages resulting from lack of materials for production, hiring employees who do not know the Polish language (war refugees from Ukraine), lack of employees who left Poland to fight for their country, growing cost of living and maintenance of the plant while not raising salaries (often this is due to the inability of the entrepreneur, who is no able to predict the prices of materials for production and estimate current costs, etc.).

CONCLUSIONS

The situation of entrepreneurs in the market is extremely complicated. Entrepreneurs did not have time to rest after the pandemic and had to face a new and unusual market situation caused by the war. The pandemic and the crisis show that entrepreneurs have similar “defensive reactions”. They do not pay funds on time, preferring to keep them at home. This is an unfavorable situation, as it disrupts the whole market, exposes other entities to payment shifts, which they often cannot settle. There were also problems among entrepreneurs related to supplies, insurance, credit and negotiations related to the termination of commercial contracts with companies operating in Russia. Entrepreneurs are trying to cope in different ways by solving the problems that arise. They have noticed that courts are not a good solution due to the long duration of hearings or emerging costs. Mediation is becoming a more and more popular solution due to its duration, preserved correct relations and lower costs.

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