group of small and medium sized enterprises which are realizing R&D activity almost 95% enterprises have been put the innovation into the practice. That's why the most important in small and medium sized enterprises policy is to realize R&D activity.

We can say that innovative enterprises are placed both into the traditional and modern sections of industry. Almost 78% of oil industry is innovative, similarly chemical industry – 73%, electric industry – 63%, and medical industry – 59,5%.[1]

The expenditure for R&D activity in all polish enterprises amounted to 8,1 billion zlotys in 1996, however in 1997 they reached almost 11 billion zlotys.[2]

In result we can say that polish enterprises in positive way react to still changing market conditions. In the present days only through the innovations is possible to hold on the position on the market. Very important in this case is effective policy of innovation. The innovation processes should be the basic of all economic strategies for small and medium sized enterprises in the world. The globalization and liberalization processes contained nowadays every part of economic and social world, and brought some changes in economic circumstances.

At a top political and economic level, globalization is the process of denationalization of markets, politics and legal systems. The consequences of this political and economic restructuring on local economies, human welfare and environment are very large.

At a business level globalization causes new markets, new possibilities, new customers but also bigger competition.

The one and only way to be alive in these complicated environment is to be innovative.

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THE PROCESS OF STTELING THE OUTSOURCING CONTRACT

The choice of outsourcing partner

One of the main stages of outsourcing is the choice of a service provider who will take over a specified function of the company. Both the search of outsouricng partner and its choice are considered to be preliminary phase of outsourcing. Despite this, they are the key to the successful outcome of the undertaking.

When starting the search of the outsourcing partner, one ought to decide if the partner is to be treated as an accustomed service provider or strategic partner. The answer to this question determines the choice of the form of cooperation, furthermore it affects the manner of negotiating.

[1] Ibidem
[2] Ibidem

Once the decision to choose the sort of outsourcing is made, it determines the complexity of the contract.

Service provider		Oustourcing partner as		Strategic partner
Narrow	←	Range of service	→	Broad
Big	←	Stability of range and requimenst	→	Small
Short	←	Period of cooperation	→	Long
Small	←	Significance for the key activity	→	Big
Standard	←	Nature of the service	→	Specjalized
Many	←	Potential service provider's	→	Few
Simple, easy	←	Changes connected with outsourcing	→	Compilcated, difficult

Figure 1 The choice of the form of the cooperation with the outsourcing partner

Source: Trocki M. Outsourcing. Metoda restrukturyzacji działalności gospodarczej, PWE, Warszawa 2001.

In the case of the outsourcing partner being only the service provider, the negotiation process will be closer to usual commercial negotiations. Then, the specified funcion is fairly simple and has no signficant meaning towards the company. The ordered services are typical, therefore one ought to search for them at the lowest price, not taking into consideration the remaining factors, i.e. confidentiality and high quality of service. In such case one need not consider satisfaction of both parties, since it is fairly simple to incorporate the service provider to another.[1]

When outsourcing is used as a means of improving functioning of the company, one should search for the strategic partner. The same relates to the situation when the specified function affects the relation of the company with customers. The relationship between the company and the outsourcer will be complex, what is more, will have an impact on the favorable outcome of the company. This means that the choice of outsourcing partner need to be conducted very thoughtfully. The contract made should include the interest of both parties, as this is the sheer thing that could lead to a favourable relationship. If one of the parties gains advantage over the other, it will result in various frictions, in effect to renegotiating or dissolution of the contract. Such situation constitutes a threat to the company by causing loses and unsettling the commercial position of the company.

In order to chose the strategic outsourcing partner, one should at first produce specification of the service, as well as the system of evaluating its realization. At the same time it is necessary to construct the unit managing the execution of the contract.[2]

The specification of the service is a sort of instruction which the outsourcing partner is to follow. In the future it will be used to forming a request for proposal - RFP. In the specification, there ought to be findings concerning the demanded outcome, meant to be reached by the service provider. Those findings should reflect the detailed analysis of specified function of the company. One is to include the timing of reaching the outcome. Is is essential to rationally formulate the objectives, too rigid adherence or to lenient adherence may lead to various difficulties in the realization of the contract.[3]

[1] Trocki M. Outsourcing. Metoda restrukturyzacji działalności gospodarczej, PWE, Warszawa 2001., p. 124.
[2] Gay Charles. L., Essinger James, Outsourcing strategiczny. Koncepcja, modele, wdrażanie, Oficyna Ekonomiczna, Kraków 2002, p. 89.
[3] ib diem, p. 89.

The Service Level Ageement – SLA - constitutes one of the main factors of the objectives of the undertaking. SLA should contain the findings concerning the assessment of the outcomes of the service. SLA should contain as well the frequency of the assesment done and correction for poorer quality than expected.[1]

One of the essential aspects of the specyfication of the service is scrutinizing current state of the function of the company which is to be outsoursed. This enables the analysis of profits or possible losses brought about by outsourcing.[2]

Moreover, one is to create the list of the potential outsourcing partners, who should receive the selecting questionaire. The questionaire ought to specify the legal status of the partner, his financial condition as well as the possibility of insolvency, the certificates of quality held, e.g. ISO 9000, insurance against civil liability for unfullfillent of the contract.[3] In the questionaire there should be included questions concerning the references of the comapany and fore-dissolved contracts.

The analysis of the data gained in this manner and possibly precized in the interviews whit the potential service providers should lead to creating the so called short list of the outsourcing partners. The short list will cover 2-3 negotiatinig partners, who will be given the request for proposal. These chosen partners will be the subjects negotiations aiming at proposing the outsourcing partner.

In the case of strategic outsourcing, the negotiations ought to be conducted in the manner avoiding antagonistic attitude. Even if the company 'wins' the negotiation the contract signed in this way will be effective in the long run. It is necessary to head towards the most effective relation, which is possible owing to the use of appropriate negotiation techniques.

For instance it is possible to use the negotiation technique based on rules, which can be expressed in the following statements:

- Separating people from the negotiating problem: those people have usually diverse viewpoints, different education, they also react emotionally different. Usually happens that people's problems and negotiating problems incorporate, therefore it is important to thoughtfully and thoroughly separate those two groups. One is obliged to conscientiously solve both people's problems and matters being the subject of the negotiation. This should be conducted in such a way that people's problems do not interfere with the subject of the negotiation. [4]
- Taking care of effective communication – it frequent happens that the parties do not talk to each other but to outer subjects e.g. to the president of the company demanding „tough" negotiating. Secondly there exists a problem of misunderstanding of the messages by both parties which can be eliminated by confirming what has been said. It is crucial as well to speak taking into consideration an aim not for the speaking itself.[5]
- Focusing on the interests of the both parties not on persisting on one's standpoint. The more precaused the pint of view the more persisting both parties are. This easily leads to breaking the negotiations. This attitude significantly restrains conducting the solution beneficent for both parties.[6]
- Planning more than one possible solution and leading to the objectiveness in setting the criteria.

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[1] Kaczmarek K., Jak podpisać dobrą umowę na outsourcing, Teleinfo 2 maja 2005 http://wamp.masterplan.com.pl/publikacje/193_umowaoutsourcingowa.inc

[2] Gay Charles. L., Essinger James, Outsourcing strategiczny. Koncepcja, modele, wdrażanie, Oficyna Ekonomiczna, Kraków 2002, p. 95.

[3] ib diem, p. 98.

[4] Fisher R., Ury W., Dochodząc do tak. Negocjowanie bez poddawania się, Polskie Wydawnictwo Ekonomiczne, Warszawa 1996, pp. 47-55.

[5] ib diem, pp. 66- 72.

[6] ib diem, pp. 31-36.

– Planning the best alternative of negotiated agreement, which means the possibility, which one may use when the agreement does come to an end. The best alternative of negotiated agreement should be comparing point when one fancies compromise or does not..

This technique has definitely more advantages than setting the bottom line of compromising. [1]

The legal aspect of the negotiations in Polish law

The act „kodeks cywilny" (civil code – CC)[2], includes the notion of the negotiation. The negotiation is activity of the parties leading to sign the contract. The contracting process consits of parley and gradual coordination of the staindpoints concerning the content of the contract. Therefore the art. 72 § 1 CC states that agreement is concracted when the parties reach the agreement to all the provisions which were the subject of object of the negotiation, thus not only essential provisions of the contract (*essentialia negoti)*.

In negotiation practice there is the habit of writing the letters of intent covering most of the provisions of the contract, which is to be concluded. The letters of intent have not been included of the regulation of the CC. It is to be estblished that they are legally discretionary, up to reaching the agreement to all the provisions which were previously the subject of negotiations.[3]

In the article 72 § 1, the civil code regulates the matter of protection the party against the so called dishonest negotiator. Wronged party can pursue compensation for the damage brought about by negotiation violating the etiquette. The art. 72 § 1 indicates negotiating despite the lack of the intention to contract the agreement.

Negotiating violating the the etiquette is:

– contracting the agreement despite the lack of the possibility to execute the contract;
– purposeful delaying of the negotiations to elliminate the possibility to negotiate with the subject competing on the market;
– concealing the circumstances in influencing the decision about contracting the agreement;
– purposeful indempting proposals impossible to realize by the other party;
– questioning previously set provisions without conforming in the present negotiations;
– negotiating despite realising that the consideration of the debtor of the agreement is impossible to conduct – art. 387 CC.[4]

The scope of the compensation responsibility is restricted to the so called negative contract interest. This means that one is able to pursue effectively compensating only the proprietary detriment brought about by dishonest negotiator. In this case it is impossible to assert the lost benefits.

It is difficult to prove the above mentioned prerequisites during the trial, it frequently boils down to establishing the proof to the real intention of the other party. Owing to this it is essential to consider the possibilty of concracting the so called the contract of negotiations. This contract should precisise tha manner of setting the standpoints as well as question of liability for damage resulting in negotiating.

It is possible to state that the parties exchanging the letters of intent concerning the procedure of negotiations conclude the contract of negotiations.[5] This attitude does not coincide with the art. 72

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[1] ib diem, pp. 141-145.

[2] Kodeks cywilny ustawa z dnia 23 kwietnia 1964 r., Dz. U. z 1964 r., nr 16, poz. 93 z późniejszymi zmianami.

[3] W. Kocot, Ofertowy i negocjacyjny tryb zawarcia umowy w ujęciu znowelizowanych przepisów kodeksu cywilnego, Przegląd Prawa Handlowego 2003, nr 5, p. 22.

[4] Rogoń D. [w:] K. Korus, D. Rogoń, M. Żak, Komentarz do niektórych przepisów kodeksu cywilnego, zmienionych ustawą z dnia 14 lutego 2003 r. o zmianie ustawy - Kodeks cywilny oraz niektórych innych ustaw (Dz.U.03.49.408) – System Informacji Prawnej LEX, Wydawnictwo Prawnicze Lex Oddział Polskich Wydawnictw Profesjonalnych Sp. z o.o..

[5] J. Tropaczyńska, Umowa o negocjacje zawarta w formie listu intencyjnego a odpowiedzialność z tytułu culpae in contrahendo, Przegląd Prawa Handlowego 1996, nr 2.

CC, as the statements of will of the parties do not concern the negotiated agreement but the manner of the negotiating. In this case, it can lead to extending the liability of the dishonest negotiator to the elements of contracting liability, therefore also to the lost benefits (*lucrum cessans*).

Thus, the compensation of the damage includes the loses of the wronged party for instance the cost of the transport, the staying in the premises of the negotiatons, legal service etc. The losses resulting from giving up the contract with another negotiator could be claimed as part of the lost benefits (*lucrum cessans*)[1]

Protection of the company's secrecy whilst negotiating

The civil code stipulates as well the protection of confidential information which is very frequently made accesible whilst negotiating the outsorcing contract. Article 72^1 § 1 CC imposes upon the negotiation partner a legal interdiction of revealing, endorsing and using for own purposes the confidential information got whilst negotiating. Both the scope of this information and the manner of handling it are the subject of the above discussed contracts of negotiation.

By confidential information we mean technical information, technological information or information with economical importance for the entrepreneur which the above mentioned wishes to conceal. [2] It seems thus unattainable to regard as cofidential the commonly known information or the information which could be obtained in any other legal manner. Revealing such information is not seen as violating the interdiction of confidentiality. It should be emphasized that the scope of protection of information entrusted to the other party is much more extensive than the scope determining the scope of dishonest competition. This signifies that apart from commercial secrecy the Civil Code protects as well other information complying with the criteria of confidence.[3,4]

At the moment of transmitting of the information between the parties, a binding relation is set up by the force of law. The debtor, by this is meant the party obliged to concealing confidential information, has to suppress the information and not to use it for own purposes. The liability of the debtor is continuous and with no term stated, furthermore, taking into consideration his function, it is disallowed to dissolve the commitment on account of renouncing the agreement of confidentiality. [5]

Violating the interdiction of revealing the confidential information got whilst negotiating causes the compensation liability. But in this case, the wronged party has the right to two alternative claims: claim for redressing damage within limits of the so called positive contractual interest, or claim for giving out benefits by the negotiator. In the case of using the first claim, damages cover both the detriment relating to property of the wronged party and his benefits lost. The liability of the dishonest negotiator result from the negotiation relation and has contractual character – Art. 471 CC. [6]

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[1] ib diem

[2] Art. 11 ust 4 ustawy z 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji – t.j. Dz.U. z 2003, nr 153, poz.1503.

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ТРАНСФЕР ТЕХНОЛОГИЙ В ЭКОНОМИКЕ РЕСПУБЛИКИ БЕЛАРУСЬ

Abstract: In order to adjust economy of Belarus with globalisation its post-industrial (innovation) transition needs to be intensified. That is why Belarusian research organisations must develop stable channels of technologies transfer in both directions.

Keywords: innovative activities, transfer of technologies

В настоящее время для Республики Беларусь очень важным вопросом является, насколько успешно экономика адаптируется к мировой глобализации: в условиях отсутствия сырьевых ресурсов только инновационный путь развития позволит стране устойчиво развиваться в двадцать первом веке.

Главным индикатором результатов научно-технической и инновационной деятельности является выпуск новой продукции, повышение конкурентоспособности предприятий и отраслей экономики. В 2004 г. объем отгруженной промышленностью наукоемкой продукции в фактических ценах составил 4350,1 млрд руб.[1], что в сопоставимых ценах на 38,1% больше, чем в 2003 г. Наибольший объем инновационной продукции приходится на следующие отрасли: машиностроение и металлообработка (1302,8 млрд руб.), топливная промышленность (1202,1 млрд руб.), черная металлургия (330,6 млрд руб.).

Распространение нововведений (трансфер), как и их создание, является составной частью инновационного процесса. В зависимости от распространения нововведения различают три формы инновационного процесса: простой внутриорганизационный, простой межорганизационный (товарный) и расширенный.

При простом инновационном процессе предполагается создание и использование новшества внутри одной и той же организации, новшество в этом случае не принимает непосредственно товарной формы. При простом межорганизационном инновационном процессе новшество выступает как предмет купли-продажи. Такая форма инновационного процесса означает отделение функции его создателя и производителя новшества от функции его потребителя. Расширенный инновационный процесс проявляется в создании новых производителей нововведения, в нарушении монополии производителя-пионера, что способствует, через взаимную конкуренцию, совершенствованию потребительских свойств выпускаемого товара. В условия товарного инновационного процесса действуют как минимум два хозяйствующих субъекта: производитель (создатель) и потребитель (пользователь) нововведения.