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# ORGANISATIONAL INEFFICIENCIES IN FINANCIAL CONSUMER PROTECTION. THE AFORTI HOLDING EXPERIENCE

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**Purpose:** The aim of the research is to determine whether it is possible to predict significant threats to financial consumers (such as financial pyramids, misselling, etc.) in advance, and if state institutions use this knowledge to take effective action. Additionally, the publication assesses the legal regulations and organizational structures in terms of their effectiveness in protecting consumer savings.
**Design/methodology/approach**: Basing on press and research papers, company announcements, financial reports, legal acts and state institutions statements, a case study was conducted on the Aforti Holding group regarding the company's activities, cash flows, changes in balance sheet structure, institutional actions, and the current situation of financial consumers.
**Findings:** It was possible to predict the risk of financial consumers losing their funds in advance, but despite the actions of several institutions, the phenomenon was not stopped. Affected consumers will probably lose most of invested funds.
**Research limitations/implications**: Further research is essential to enhance the organization and efficacy of consumer protection institutions within the financial market. Some data published by Aforti has not been audited, which could impact its reliability.
**Practical implications:** Institutions responsible for consumer protection can use this analysis to enhance the effectiveness of their actions, especially in terms of communication with consumers.
**Social implications:** Research conclusions can increase the focus of state institutions on the financial consumer and lead to more effective financial education for consumers.
**Originality/value:** Analysis of the effectiveness of financial consumer protection in light of newest events in the financial market. The conclusions from the research may serve as a basis for determining the direction of necessary changes in consumer protection.
**Keywords:** financial market, financial consumer protection, misselling, financial pyramid, Aforti Holding.
**Category of the paper:** research paper, case study.

## 1. Introduction

As the economy, including the financial market, continues to grow, the range of financial services offered to consumers is constantly expanding, along with the increasing complexity of financial products. Most consumers are interested in investing their savings, typically focusing on the safety of the offer and the interest rates being offered to them.

In a situation of low interest rates and high inflation, as observed in Poland in recent years, the potential returns have often become a priority for consumers. As a result, various offers appear on the market, some of which are contrary to the consumer's needs, typically characterized by above-average risk, and sometimes even bearing signs of crime.

Consumer safety in the financial services market should be guaranteed by the state, including a range of institutions established for this purpose. Unfortunately, a broad group of consumers periodically loses their life savings, often as a result of activities by lesser-known para-banking institutions, and sometimes even due to unethical banking offer. In recent years, some of the most well-known Polish examples include the Amber Gold scandal (financial pyramid) and the misselling of GetBack bonds (in banking sector).

The purpose of the following is to determinate the effectiveness of consumer protection against such phenomena, as well as highlighting any potentially failures in these mechanisms. The research was conducted basing on a case study of Aforti Holding S.A., and the tested research hypotheses pertain to the ability to predict undesirable phenomena, the reaction of state institutions to incoming information, and the effectiveness of the actions taken.

It should be emphasized that the Aforti scandal is the latest phenomenon in the e-consumer market and involves a significant number of consumers, which allows for a thorough assessment of the current condition of the consumer protection system.

## 2. Literature review

There is a significant imbalance of power and resources in the financial services market, and the consumer of these services is undoubtedly the weaker party. In particular, the consumer faces a knowledge deficit, both regarding the structure of financial products and the associated risks. For these reasons alone, institutional protection of consumers in the financial market is necessary. Moreover, such protection has a positive impact on the financial market and promotes economic growth (Frączek, Mitręga-Niestrój, 2015). It should also be emphasized that consumer protection, including for financial services, is a constitutional obligation of state authorities (Horosz, 2022).

Consumer safety in the financial services market in Poland is overseen by several institutions, including specialized ones such as the Financial Supervision Authority (KNF), the Office of Competition and Consumer Protection (UOKiK), and the Financial Ombudsman (RF). The Financial Supervision Authority exercises integrated oversight of the entire financial market, including granting licenses, conducting inspections and imposing penalties, issuing public warnings, and providing recommendations. The actions of this body are aimed at the entire financial market. The Office of Competition and Consumer Protection combats practices that violate the collective interests of consumers and unfair contracts through its decisions. The Financial Ombudsman, in turn, engages in both generalized pro-consumer activities and intervenes in individual cases (Kiciński, 2022). Additionally, one of the main institutions is the Bank Guarantee Fund (BFG), which focuses on the banking market, particularly bank deposits (Czechowska, 2017). Actions of the aforementioned institutions in the area of consumer protection for banking services are also described, indicating that some mechanisms are also applied to para-banking institutions (Pisarewicz, Kowalewska, 2017).

Financial consumers are exposed to many risks, including the most severe – loss of their funds, which can result from misselling or financial fraud. Misselling involves offering financial services to consumers that basing on the information available to the entrepreneur about the consumer's knowledge and requirements do not meet their needs. A well-known case is GetBack bonds offered by banks to consumers, often presented as a product even safer than a bank deposit. GetBack’s stocks were suspended, the company is undergoing restructuring, and approximately 9000 consumers were harmed (Czaplicki, 2021).

One of the more distinctive methods of organized fund acquisition from consumers are the financial pyramid and Ponzi scheme. The main difference between these structures lies in how new investors are recruited: in a financial pyramid, the structure is multi-level (participants can create their own sales networks), whereas in a Ponzi scheme, the sales are entirely conducted by a single entity (Lesiak, 2023). In the literature, there is also an opinion that both terms can be used interchangeably, focusing only on the complexity of the sales structure. Such schemes offer investments promising high returns. However, in reality, the payouts of capital and interest are made using only funds obtained from new investors (Bojarski, 2020). For the purposes of this publication for simplicity the term “financial pyramid” will be used.

One of the most notorious financial frauds of this kind in recent years was Bernie Madoff's hedge fund, which raised about $65 billion from investors, including institutional ones (Quisenberry, 2017). In Poland, the most famous case is the Amber Gold scandal, where the company offered consumers high-interest deposits, allegedly earned through trading precious metals. Despite actions taken by various state institutions (including KNF and UOKiK), the entity continued to sell its products until it lost liquidity and declared bankruptcy. The remaining assets of the company were insufficient to satisfy consumers, even at the nominal value of the funds entrusted (Antonowicz, Szarmach, 2013). In literature, it is also noted that an adequate level of financial education for consumers would have reduced the losses incurred by consumers in the case of Amber Gold, as the offered interest rate was already suspicious (Kurowski, Laskowska, 2016).

## 3. Research methodology

The conducted research aims to determine how far in advance it is possible to foresee the risk of financial loss for a significant number of consumers, and if so, whether state institutions responded to the warning signals. Another objective is to assess whether these actions provided actual protection for consumers, and to evaluate whether the existing organizational and legal frameworks effectively safeguard consumers from lossing their funds.

The research based on a case study of Aforti Holding S.A. (described in the press as a financial pyramid). Using publications, particularly press articles, announcements from state institutions, and statements issued by the company itself, a detailed history of actions taken by both the company and financial market institutions was established.

Based on the annual and quarterly consolidated financial statements of the company, the financial flows and changes in the balance sheet structure were analyzed. Furthermore, using the company's announcements, documents available from bankruptcy and restructuring proceedings and legal acts possibility of consumers recovering the funds entrusted to the company was assessed.

The following research hypotheses were presented:

- it was possible to predict in advance payment issues affecting financial (hypothesis 1),
- state institutions obtained such information and took actions aimed at protecting consumers (hypothesis 2),
- actions taken by state institutions protected financial consumers from losing their savings (hypothesis 3).

## 4. Results – case study

### 4.1. Timeline of events

Aforti Holding S.A. debuted on the Warsaw Stock Exchange (WSE) in 2011 (as Montu), initially offering business intelligence services and then transforming into a group of companies providing various financial services. The company engaged in active marketing, including sponsoring sports clubs, and offered a variety of investment products to financial consumers (Misiura, 2024b). In 2018 Aforti Holding S.A. was the subject of scientific research, but only in terms of the impact of management methods on the financial efficiency of the enterprise (Rostek, Młodzianowski, 2018).

Aforti's actions in offering investments products to financial consumers persisted at least since 2019 (Provincial Prosecutor's Office, 2024). Aforti presented its products, particularly promissory notes, as risk-free and with guaranteed returns (Decision nr RWR 6/2023, 2023). These investment products were marketed in a way that misrepresented their true nature to consumers (Rutkowska-Tomaszewska, Zwaliński, 2023). The products were sold by former bankers, leading consumers to perceive them as bank offers. Following the commencement of proceedings by the Office of Competition and Consumer Protection, promissory notes were withdrawn from the offer and replaced by other products, including debt conversion based on promissory notes. The company also offered consumers shares in its subsidiaries (Misiura, 2024b).

Aforti's various products were offered to around 3,000 consumers, initially promising returns of 6% annually, later increasing to 14-17% (Czuchnowski, 2023). The total funds acquired by Aforti and its subsidiaries from consumers range from approximately 280 million PLN (Misiura, 2024b) to even half a billion PLN (Czuchnowski, 2023), depending on the source and methodology used. Issues with fulfilling the company's obligations to consumers began in mid-2022, and payments ceased at the beginning of 2023. It should be noted that during this period, new investment products were still actively offered to consumers (Misiura, 2024b).

The Polish Audit Oversight Agency (PANA) filed a notice at the beginning of 2022 regarding a potential crime by Aforti, indicating possible signs of a financial pyramid (Kucharczyk, 2023). In addition, the auditor raised reservations in case of consolidated annual report for 2021, particularly regarding the valuation of short-term and long-term investments (Report, 2022). A year later, the company was unable to find an entity to approve the consolidated annual report for 2022, so the report was not submitted (Misiura, 2024b). Due to the failure to submit the consolidated annual report for 2022, the Warsaw Stock Exchange Management Board suspended trading of Aforti Holding S.A. shares on June 1, 2023 (Resolution WSE, 2023), and maintained the suspension for the same reasons on June 3, 2024 (Resolution WSE, 2024).

Aforti Finance, a subsidiary of Aforti Holding, was added to the Financial Supervision Authority warning list in July 2023 (RB ESPI 12/2023, 2023). The President of the Office of Competition and Consumer Protection initiated proceedings on December 10, 2020, regarding the offering of promissory notes to consumers in a manner inconsistent with their function and providing false information about the safety of invested funds and guaranteed returns. On August 4, 2023, a fine of 790,234 PLN was imposed on Aforti Holding S.A. (Decision nr RWR 6/2023, 2023). The Provincial Prosecutor's Office in Warsaw initiated an investigation in 2023 into fraud related to valuable property concerning Aforti's investment products. The Financial Supervision Authority imposed financial penalties on a member of Aforti

Holding's management in 2023 and 2024 for failing to report the sale of his shares despite the obligation to do so (KNFa, KNFb).

On December 13, 2023, a bankruptcy petition for Aforti Holding S.A. was registered, and proceedings began on May 16, 2024 (KRZa). On June 14, 2024, Aforti Holding S.A. submitted a restructuring plan (KRZb). On September 14, the proposed arrangement was approved by 67% of creditors, meeting the required 2/3 majority (ESPI 17/2024, 2024). The voting process was surrounded by controversies, particularly due to the invalidation of 81 votes (11.4%), which could have influenced the outcome. According to the plan, repayments will be quarterly, with the first payment in two years amounting to 1% of the claims, and subsequent payments increasing to 2% and so on, up to 24% (Misiura, 2024a).

## 4.2. Analysis of financial statements for the years 2018-2023

A range of information about Aforti Holding's activities can also be obtained basing on the analysis of consolidated financial statements. The company published annual financial statements (approved by the auditor) only up to 2021. Therefore, data for 2022 and 2023 were obtained from quarterly reports, whereas the 2021 report had reservations (thus, its reliability may be also limited). Selected data, particularly relevant to the research subject, are presented in Table 1.

**Table 1.**
*Selected financial data of Aforti Holdings S.A. capital group in years 2018-2023 (in million PLN)*

| year | net revenues from sales | profit (loss) on sales | total assets | own shares (stocks) | assets without own shares | total liabilities | long-term liabilities | net profit (loss) |
|---|---|---|---|---|---|---|---|---|
| 2018 | 572,01 | - 4,58 | 155,05 | 0 | 155,05 | 148,02 | 57,53 | 0,32 |
| 2019 | 1036,53 | - 27,4 | 210,07 | 20,58 | 189,49 | 164,85 | 93,48 | 0,24 |
| 2020 | 1010,42 | - 21,27 | 283,31 | 36,36 | 246,95 | 239,7 | 131,02 | 3,67 |
| 2021 | 2219,68 | - 21,6 | 194,88 | 66,42 | 128,46 | 249,22 | 119,57 | - 64,74 |
| 2022 | 2794,49 | - 16,03 | 181,26 | 66,42 | 114,84 | 275,65 | 189,72 | - 33,57 |
| 2023 | 1759,19 | - 10,38 | 154,88 | 66,42 | 88,46 | 300,04 | 219,49 | - 21,97 |

Total liabilities: Liabilities and provisions for liabilities.

Source: own work basing on consolidated annual reports of the Aforti Capital Group for the years 2018-2021 and quarterly reports of the Aforti Capital Group for Q4 2022 and Q4 2023.

The group's exceptionally high sales revenue is certainly striking, amounting to over half a billion PLN in 2018, and nearly 3 billion PLN at its peak in 2022. Media reports suggest that such high revenue was a result of the accounting practices of Aforti's online currency exchange operations, with the total value of sold currencies being fully considered as revenue. Although this practice complies with legal regulations, it could have misled consumers (Misiura, 2024b). This thesis is supported by the group's sales profit, which appears to be only marginally influenced by the volume of sales. The change of this values is presented in Figure 1.

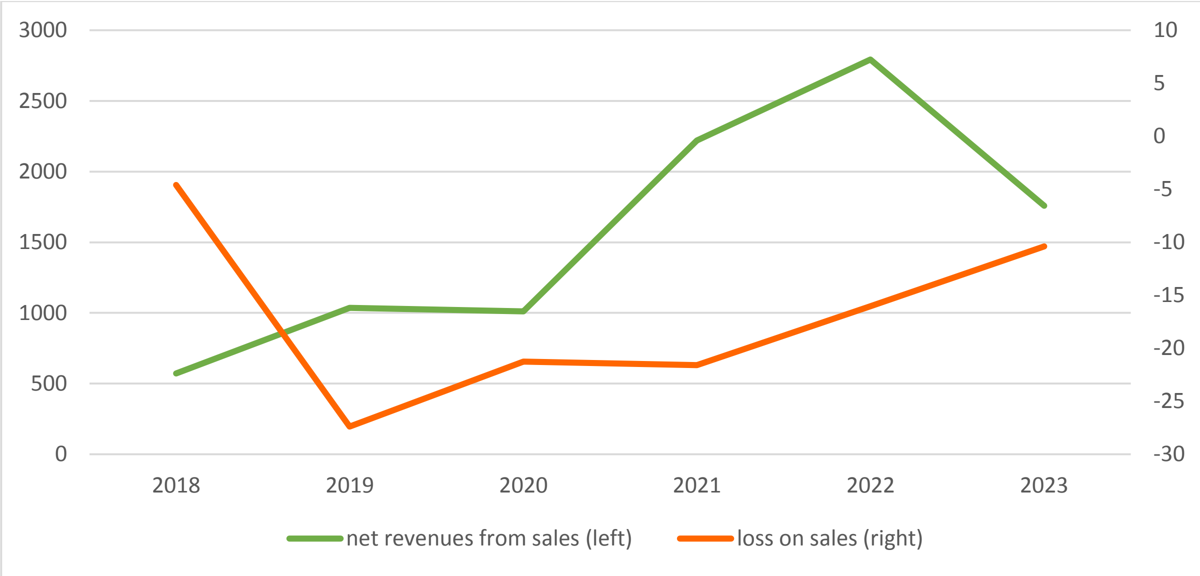


**Figure 1.** Aforti Holding S.A. capital group net revenues from sales and loss on sales in years 2018-2023 (in million PLN).

Source: own work basing on consolidated annual reports of the Aforti Capital Group for the years 2018-2021 and quarterly reports of the Aforti Capital Group for Q4 2022 and Q4 2023.

Equally striking is the increase in Aforti Group's total debt and the rise in long-term debt, particularly based on promissory notes and loans (to which most of the promissory note debt was converted). It should be emphasized that during the observed period, the share of long-term debt (mostly arising from the sale of the aforementioned financial instruments) systematically increased from just under 39% in 2018 to over 73% in 2023. The ratio of these values is shown in Figure 2.

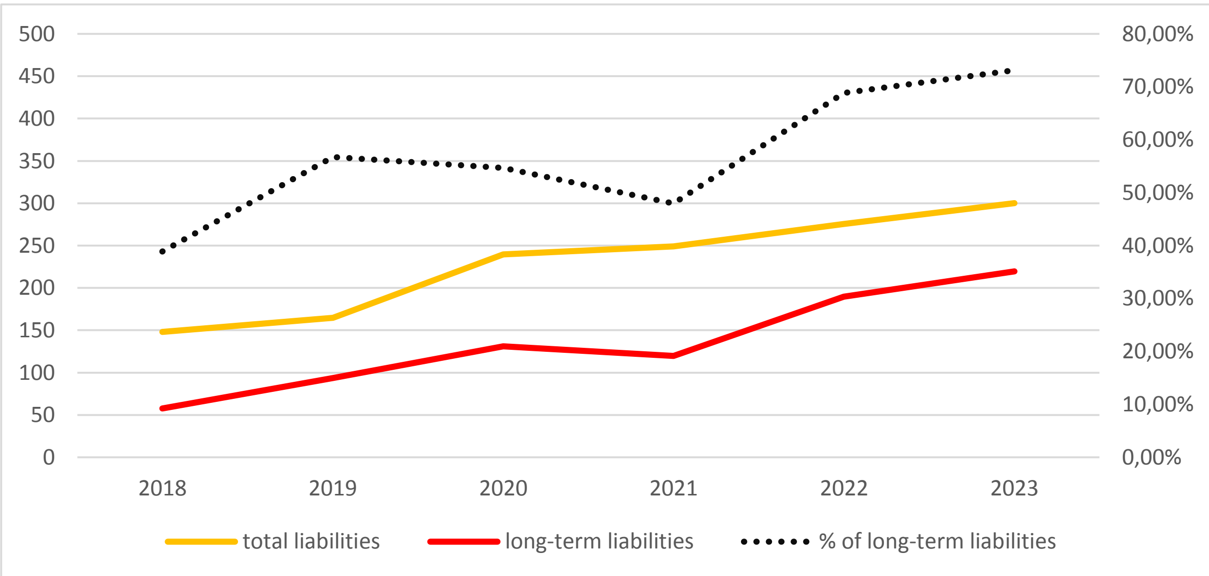


**Figure 2.** Aforti Holding S.A. capital group structure of liabilities in years 2018-2023 (in million PLN).

Source: own work basing on consolidated annual reports of the Aforti Capital Group for the years 2018-2021 and quarterly reports of the Aforti Capital Group for Q4 2022 and Q4 2023.

Until 2020, the total value of Aforti Holding S.A.'s assets was also increasing, with a notable and successive rise in the value of own shares in the assets (reaching nearly 43% in 2023). Considering the current situation of the company (bankruptcy filing, restructuring approval request, suspension of stocks trading), it can be assumed that this position does not reflect the reported value. Therefore, the value of assets excluding own shares has been calculated. The comparison of these values is presented in Figure 3.

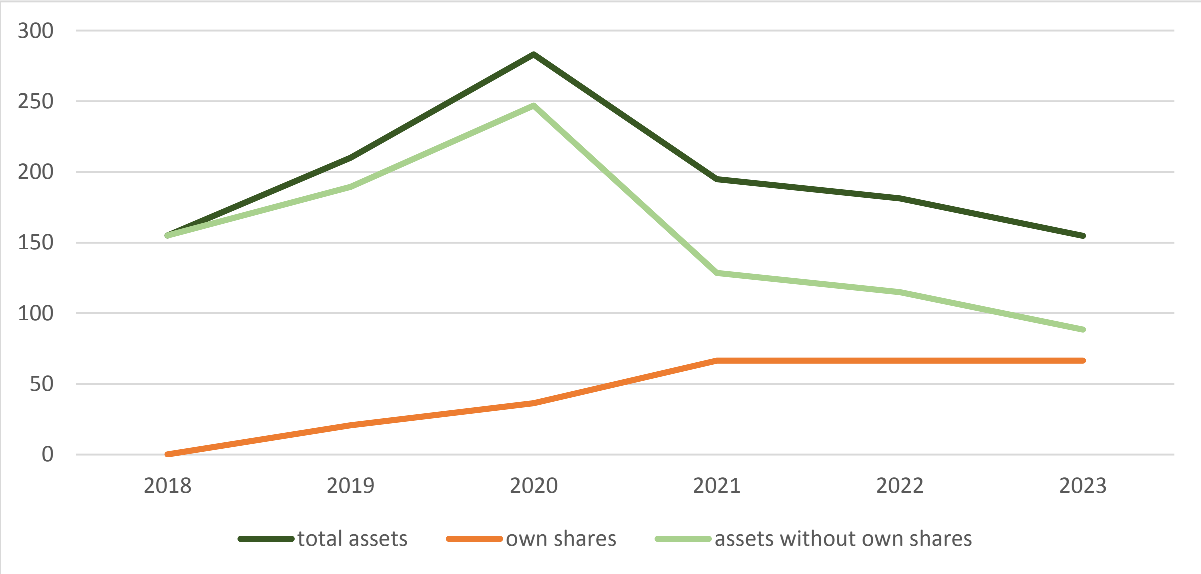


**Figure 3.** Aforti Holding S.A. total assets and own shares in years 2018-2023 (in million PLN).

Source: own work basing on consolidated annual reports of the Aforti Capital Group for the years 2018-2021 and quarterly reports of the Aforti Capital Group for Q4 2022 and Q4 2023.

As indicated above, the company's debt steadily increased throughout the analyzed period, with asset values rising until 2020 and then falling back to 2018 levels. The difference between assets excluding own shares and total debt from 2018-2020 was slightly above zero (7.03 million PLN, 24.64 million PLN, and 7.25 million PLN, respectively), but in later years, these values significantly dropped below zero (minus 120.76 million PLN, minus 160.81 million PLN and minus 211.58 million PLN). These values are shown in Figure 4.

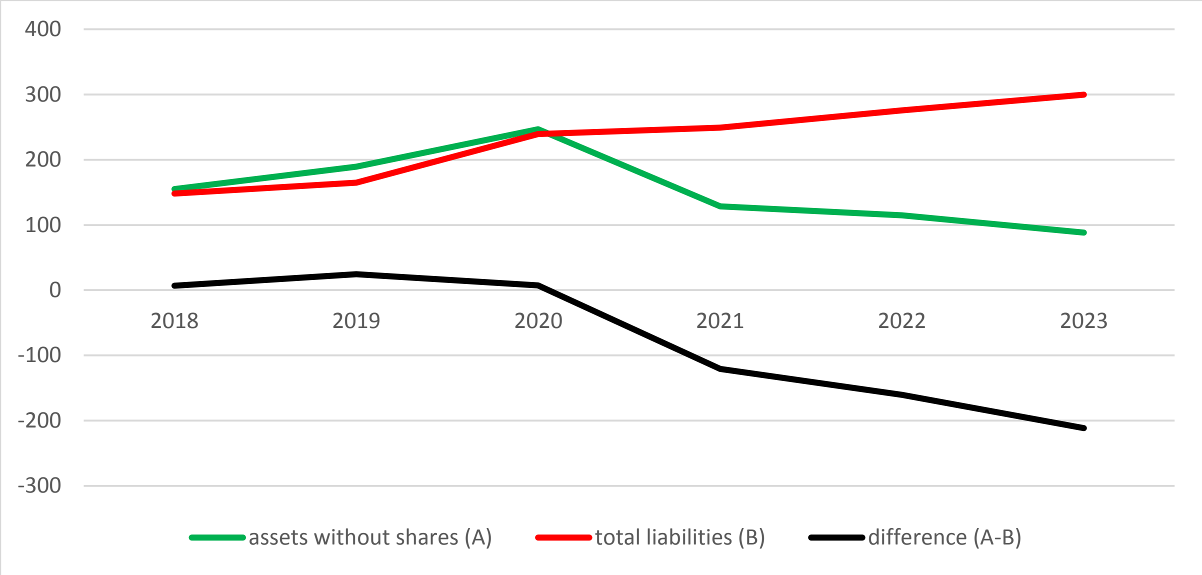


**Figure 4.** Aforti Holding S.A. assets without shares versus total liabilities in years 2018-2023 (in million PLN)

Source: own work basing on consolidated annual reports of the Aforti Capital Group for the years 2018-2021 and quarterly reports of the Aforti Capital Group for Q4 2022 and Q4 2023.

It's worth noting that during the analyzed period, the company initially achieved very modest profits (the highest being 3.67 million PLN), but from 2021 onwards began recording losses reaching tens of millions. At least since 2021, the company has not been able to meet all of its obligations (the value of which continued to increase), and by 2023, the total liabilities exceeded the value of its reported assets, which theoretically could have been used to satisfy creditors, more than threefold.

### 4.3. The situation of consumers in context of restructuring and bankruptcy

As indicated above, a bankruptcy petition was filed against Aforti, and then a restructuring petition was filed. When there are pending bankruptcy and restructuring requests, the restructuring request takes precedence. Therefore, if a restructuring request is submitted (even if it is after the bankruptcy filing), the restructuring request will be addressed first, and the bankruptcy request will be put on hold during that time (Machowska, 2017). This regulation makes the company's intent to initiate restructuring proceedings clear.

The conclusion of a restructuring arrangement is effective against all debts covered by it, even if they are not listed in the debt register. The only exception to this rule are debts not disclosed by the debtor, provided that creditors were unaware of the restructuring proceedings. Acceptance of the arrangement prevents the enforcement of existing debts (Groele, 2020). Consequently, the potential approval of the restructuring arrangement would significantly limit the ability of consumers who purchased Aforti products to recover even part of their funds. Even hypothetically, executing the arrangement would expose consumers to losses, as they would receive only the nominal amount of their funds over many years.

It is also possible that Aforti's restructuring will not be approved by the court. In such a situation, the declaration of bankruptcy is expected. The declaration of bankruptcy suspends legal proceedings against the bankrupt, and the court can only hear the case after the bankruptcy procedure is exhausted. It is also not possible to initiate new legal proceedings for claims subject to bankruptcy proceedings (Chrapoński, 2021). After the sale of the bankrupt's assets, the proceeds are distributed according to a specified order, with contractual claims (including those from Aforti's financial instruments) being satisfied only after, for example, employee wages (Janda, 2023). Therefore, in the case of bankruptcy consumers can expect to recover only a small portion of their invested funds.

Even if hypothetically neither the restructuring is approved nor the bankruptcy declared, it is highly unlikely that consumers of Aforti's investment products will recover their funds, at least in their nominal value. Given the company's current financial situation, it is far more probable that they will receive only a very small portion of the entrusted capital.

## 5. Discussion

The analysis of the financial statements of Aforti Holding S.A. highlights the use of accounting methods that allowed the company to report significant sales revenues. However, the systematic increase in these revenues did not correlate with the profit from sales or the overall profit of the group. These discrepancies were observable from the beginning of Aforti's involvement in offering investment products to consumers. It was also noted by professionals but was not apparent to the average consumer. It can be assumed that this was the first warning signal.

The company has been systematically increasing the position of its own shares since 2019, and the assets minus own shares only slightly exceeded liabilities until 2020, but starting from 2021, they achieved significantly lower values (the difference already exceeded 100 million PLN gap in 2021). From 2021, not only did the value of assets minus own shares decrease, but the value of total assets also declined. The company's debt structure was also systematically changing, with the share of long-term liabilities (especially from loans and promissory notes – products offered to consumers) increasing from less than 40% to over 70% during the studied period. Changes in the asset structure can be considered a second warning signal.

The perturbations associated with the publication of subsequent financial statements are also significant. The annual financial statement for 2021 was published with reservations from the auditor, while the annual financial statements for 2022 and 2023 were never published by the company. Notably, at the beginning of 2022, the PANA notified the prosecutor's office of a potential financial pyramid scheme. Notifications were also sent to institutions such as the Office of Competition and Consumer Protection (UOKiK). The issues related to the financial statements were a strong enough warning for state institutions to take their initial actions basing on them.

The conducted case study indicates that it was possible to observe warning signals and foresee, with noticeable advance, the problems related to the activities of Aforti Holding S.A., specifically the risk of the company's inability to meet its obligations towards financial consumers. Hence, Hypothesis 1 should be considered positively verified. It should be emphasized that identifying this phenomenon was possible for professional entities, but not for average consumers.

The notification of a potential crime resulted in the initiation of an investigation by the Provincial Prosecutor's Office in Warsaw. At the end of 2020, the President of the Office of Competition and Consumer Protection initiated proceedings (which led to an apparent change in Aforti's offer in 2021), and in August 2023, imposed a fine on Aforti Holding S.A. due to identified defectiveness. In 2023, the Financial Supervision Authority included a subsidiary of Aforti Holding S.A. on the public warning list and imposed fines on a member of Aforti Holding's management in 2023 and 2024 for irregularities in the sale of his shares in 2021. In June 2023, the WSE Management Board decided to suspend trading of Aforti shares. Clearly, information about the irregularities reached state institutions, and appropriate proceedings were initiated. Therefore, Hypothesis 2 should also be considered positively verified.

Unfortunately, despite the fact that the first warning signs at Aforti could be noticed a few years ago, the company continued to intensively acquire funds from consumers. Moreover, the initiated proceedings at best resulted in an apparent remediation of the situation (e.g. withdrawing promissory notes from the offer and replacing them with other instruments). Even with the involvement of all institutions and the suspension of Aforti's stocks trading, the company continued to offer its products to consumers. It is therefore reasonable to ask why, despite the available information and actions taken, significant amounts of funds were still being acquired from consumers, and why clear information about the actual risk did not reach consumers.

The legal consequences of current situation are poor for consumers who have purchased Aforti's investment products. Even if restructuring is adopted, in the best case, it will result in the return of funds at their nominal value over many years. In the worst-case scenario, it will merely delay the declaration of bankruptcy. The company's bankruptcy will also be a lengthy process, during which consumers will recover at most a small portion of the entrusted funds.

The facts described above indicate that the existing legal and organizational solutions neither protected a significant number of consumers from purchasing Aforti's investment products nor provide them with a real possibility of recovering their invested funds. Therefore, Hypothesis 3 should be considered negatively verified.

However it should be noted that there are some limitations of conducted research, particularly due to the nature of the research material. Firstly, the financial statements of Aforti for the period 2021-2023 are either subject to auditor's reservations or have not been audited at all, thus the data provided by the company may be unreliable. Secondly, due to the freshness of the topic, a significant part of the events concerning Aforti has been established based on non-peer-reviewed press publications. Finally, the preparatory criminal proceedings concerning irregularities are still ongoing and their final conclusions are unknown.

## 6. Conclusions

The Aforti case represents the latest event in the consumer financial market, enabling the analysis of the current level of consumer protection against the risk of losing their savings (invested funds), as well as the current nature of such offers addressed to consumers.

Due to the economic situation, particularly high inflation and low interest rates on banking products, Aforti's offer attracted considerable interest from consumers seeking investment opportunities with more favorable terms than those offered by bank deposits. Without delving into whether Aforti's activities constitute a crime (a relevant investigation is underway), there were at least a few clear signals indicating significant risks associated with these products, including suspicions of a financial pyramid scheme.

Despite the fact that state institutions took action in response to these signals, subsequent consumers were not protected from losing their funds. Moreover, it seems likely that in the event of Aforti Holding S.A.'s restructuring or bankruptcy, the affected consumers will recover at most a small portion of their savings, and this in an uncertain future. Thus, despite the activation of mechanisms developed in the wake of previous scandals, effective protection for consumers was not ensured.

It is evident that a range of changes is needed in consumer protection within the financial market, both in terms of legal regulations that form the basis for state institutions' actions and the way these institutions operate. The actions they take should result in providing consumers a real protection. The research results and their conclusions will be particularly useful for consumer protection institutions in the financial market, benefiting both supervisory entities and consumer-focused organizations. The results could be also valuable for further studies in field od financial consumer education.

Further research is also essential to better understand the mechanisms of operation of para-banking institutions, which would allow for quicker identification of such entities in the future, as well as understand the decision-making processes of consumers. This could enable the implementation of effective preventive measures, including consumer education that empowers them to independently assess such entities.

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