

# Legal Alert

## Guidelines for proposed amendments to the Act on Competition and Consumer Protection

September 2012

On 15 May 2012, the President of the Office of Competition and Consumer Protection - Poland's competition authority - published an outline for an act amending the Act on Competition and Consumer Protection, with a call for public comment on the proposal. After receiving suggestions from the business and legal communities, the authority convened a conference in July to help agree on a revised approach. On 16 July 2012, the authority published a final draft of the guidelines for the amending act and submitted it to the Government Legislation Centre to draw up the amending act. The document reflects proposals submitted by 22 entities as part of the public comment process. The proposals include new legal institutions of importance for businesses.

### Merger clearance

- Introduction of a two-stage procedure: As a rule, the proceeding would end within 1 month. If conditions were met demonstrating that the matter has a high degree of complexity, the competition authority could issue an unappealable order extending the period for concluding the proceeding to 4 months.
- Concentrations involving a merger or joint venture of small undertakings (i.e. with combined annual revenue in Poland of up to EUR 10m) would be exempt from review by the competition authority.

### Voluntary submission to punishment in the case of anti-competitive practices

The competition authority has proposed that it be vested with unfettered discretion in its use of this institution. The sole criterion for a decision to commence this procedure would be to expedite the proceeding.

### "Leniency plus"

An additional reduction in penalties would be introduced for undertakings that applied for leniency but did not escape punishment, if they decide to disclose information about another illegal agreement which the competition authority was not previously aware of.

### Fines imposed by the competition authority

- Liability would be imposed on individuals performing managerial functions or serving as members of the management body of an undertaking, as well as those not working for the undertaking at the time of the proceeding but who worked for it at the time of the violation, for an act or omission (even unintentional) that resulted in the undertaking's violation of the prohibition on anti-competitive practices. The fine imposed on such an individual could be as high as EUR 500,000.
- More specific grounds would be provided that should be taken into consideration when assessing a penalty or as mitigating factors for reduction of a penalty.

In response to problems of interpretation that have been raised, the competition authority proposes revising the current regulations concerning such issues as inspections and searches.

### Changes involving inspections

- The act would be clarified to state expressly that when preparing notes from documentation contained in IT media, inspectors would be authorized to make copies of the media related to the inspection and make copies of email correspondence.
- In addition to the existing requirements, the period covered by an inspection would have to be specified in the authorization to conduct the inspection.

- The competition authority would be vested with the right to issue an order to seize items for the duration of the inspection, up to 7 business days.

### **Changes involving searches**

- An express reference would be made to criminal procedure rules guaranteeing the protection of the rights of the targets of a search, e.g. with respect to legally protected confidentiality.
- The target of a search would be given the right to assert reservations within a specific time following the end of the search with respect to electronic data copied during the search containing legally protected confidential information.
- A procedure for challenging search measures before the Court of Competition and Consumer Protection would be introduced.

### **Summary**

The guidelines for an act amending the Act on Competition and Consumer Protection, as presented by the Polish competition authority, offer solutions to many serious issues of interpretation that have arisen in applying the current law. They also contain proposals for introducing institutions into the Polish legal system that could significantly expedite proceedings before the President of the Office of Competition and Consumer Protection.

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