

Legal Alert

Amendment of the Competition and Consumer Protection Act: Major changes in consumer protection



July 2015

The draft of a bill entitled the Act Amending the Competition and Consumer Protection Act and Certain Other Acts has been submitted to the Polish Sejm for its first reading. Following the recent amendments in the area of protection of competition which entered into force on 18 January 2015, this time deputies will work on far-reaching changes in the protection of collective consumer interests. If the bill is passed by the end of the current term of the Parliament, the new regulations will enter into force at the beginning of 2016. Below we present the most important provisions of the bill in the wording from 10 July 2015.

Decisions on abusive contract clauses

The bill would introduce in the act a new type of proceeding conducted by the Polish competition regulator—the President of the Office of Competition and Consumer Protection: proceedings for recognition of provisions of form contracts as impermissible, which generally should be completed with 4 months after commencement (or 5 months in particularly complicated cases). Thus the regulator would be given independent competence to issue decisions at the first instance on abusive clauses. (Currently the authority deciding on these cases is the Court of Competition and Consumer Protection.)

As a rule, the use of clauses in form contracts held to be impermissible carries the risk of a penalty of up to 10% of the turnover generated by the business in the financial year preceding the year when the penalty is imposed. In its decision, the regulator could also order a business to take certain actions to remediate the consequences of use of the impermissible clause. The bill indicates that more specifically a business may be required to:

- Provide notice of the regulator's decision to consumers who are parties to form contracts containing the abusive clause
- Submit a statement in the form and content specified in the decision.

The duties imposed on businesses could make it necessary for them to sign annexes to existing contracts with consumers. However, the decision by the regulator would not stipulate the wording of the changes that should be implemented.

The regulator would be authorized to impose a fine of up to the equivalent of EUR 10,000 per day for each day of delay by the business in performance of the obligations.

If during the course of the proceeding the business undertakes to perform or refrain from performing certain actions, or to remediate the consequences of its actions, the regulator could reflect such undertakings in its decision. Then the regulator would not impose a financial penalty on the business for violation of a prohibition against using form contract clauses held to be abusive. Such decision would require the business to provide, within a specified period, information concerning the degree of performance of these undertakings. If the business failed to provide such information, even unintentionally, or provided false or misleading information, the regulator would then be authorized to impose a fine of up to the equivalent of EUR 50 million.

If the business did not perform the obligations imposed on it, the regulator would be entitled to overturn the decision and impose a fine on the business of up to 10% of its turnover in the preceding year.

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The bill provides that a decision by the regulator holding clauses in a form contract to be impermissible is effective only with respect to the business to which the decision is addressed and to all consumers who entered into a contract with the business on the basis of the form containing the disputed clause.

“Misselling” would infringe the collective consumer interests

The bill addresses the issue of “misselling” of financial services. It would be a violation of the collective consumer interests (threatened with a fine of up to 10% of the turnover in the preceding year) to offer consumers financial services that do not suit the needs of the consumers as determined on the basis of the information available to the business concerning the characteristics of the consumer, or to offer them services unsuited to their character. Significantly, merely offering “unsuitable services” would be penalized, regardless of whether the services were actually sold to the consumers.

Interim decision

As in the case of antitrust proceedings, in proceedings involving practices infringing the collective consumer interests the competition regulator would also be authorized to issue a decision requiring a business to cease and desist certain actions in order to prevent serious and hard-to-remedy threats even before formal commencement of a proceeding, on the basis of a showing that further use of the alleged practice may cause such threat. Filing of an appeal by the addressee of the decision would not stay enforcement of the decision.

Given the far-reaching consequences of this type of decision, it is necessary to ensure that an appeal can be considered as quickly as possible. The bill proposes that if an appeal is filed against an interim decision (issued in either an antimonopoly proceeding or a proceeding involving practices infringing the collective interests of consumers), the competition regulator would forward the case file to the Court of Competition and Consumer Protection within 14 days after filing of the appeal, and the court would rule on the appeal within 2 months after receiving the case file.

Longer limitations period on practices infringing the collective consumer interests

The bill provides that the competition regulator would not be authorized to commence proceedings in matters involving infringement of the collective consumer interests more than 3 years after the end of the year in which the given practice ceased to be applied. Under current regulations, a matter becomes time-barred 12 months after the end of the year in which the practice ceased to be applied.

“Controlled purchases”

The bill proposed to introduce the institution of “controlled purchases.” In order to obtain information which could be used as evidence in a matter, inspectors from the Office of Competition and Consumer Protection or the Trade Inspectorate would be permitted, on the basis of authorization issued by competition regulator, to take steps aimed at purchasing goods without disclosing their identity. A record of the activity could be made using audiovisual devices without informing the subject of the inspection.