

Legal Alert

Ground-breaking amendments to Polish Competition law (including parental liability)



The Polish Parliament is finalizing works on ground-breaking amendments to Polish Competition law, including introduction of parental liability as well as significant facilitation of conducting dawn raids by the Polish Competition Authority.

Please see the expected changes in law that are crucial for international clients doing business in Poland below:

1. The parent company will pay for actions of its subsidiary – compliance structures are important

A very strict and broad parental liability rules will be introduced into Polish Competition Law:

- if a subsidiary engages in an anticompetitive practice (anticompetitive agreement or abuse of dominance), the company exercising decisive influence over that undertaking (parent company) will be automatically held liable for breach of antitrust law. As a rule the ultimate parent company will be liable in such situation.

The Polish Competition Authority will have the right to impose a penalty in the amount up to 10% of the turnover generated by the parent company (*de facto* by the entire capital group).

Financial fine may be also imposed on managers of parent companies.

Given the above we recommend to:

- conduct antitrust audits within Polish subsidiaries
- in case of recognising that a subsidiary is in breach of competition law provisions consider filling for leniency application
- introduce or update antitrust compliance programs
- conduct antitrust trainings for employees (management boards/sales departments)

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We write about things important for business.

2. Financial liability for actions of associations of undertakings

Second important amendment concern breach of competition law by association of undertakings.

In case a fine is imposed on an association of undertakings for breach of competition law provisions, and the association is unable to pay the fine, **such fine will have to be paid by all members of the association** (this may be regardless of their participation in actions causing breach of competition law provisions).

Given the above we recommend to:

- verify the scope of activities conducted by all association of undertakings to which Polish subsidiaries belong
- verify if all associations of undertakings in which a Polish subsidiary is active have implemented antitrust compliance programs

3. Conducting *dawn raids* will be facilitated

The new provisions will make it easier for the Polish Competition Authority to obtain court decisions required to conduct a search at the premises of undertakings.

This will increase the number of inspections conducted by the Polish Competition Authority. We are already facing high activity in *dawn-raids*.

Additionally, the basis for calculation of fines for obstructions during inspections will change in such a way that fines for obstructions will be higher.

Given the above we recommend to:

- implement/update *dawn raid* procedures – in the light of the specificities of Polish law including important practical developments from last years
- conduct *dawn raid* trainings for employees of companies based in Poland
- conduct *mock-dawn-raids* to prepare your employees for actual inspections

4. Facilitation of fighting anticompetitive activities in tenders

New provisions will make it significantly easier to file leniency applications for bid rigging.

This may lead to increased activity of the Polish Competition Authority in the scope of bid rigging. A special department within the authority was set up, devoted only to anticompetitive activities concerning tenders.

5. Structural measures

Last but not least, the Polish Competition Authority acquired the right to impose measures on undertakings that interfere with their business structure, such as:

- division of the undertaking;
- disposal of all or part of the assets of one or more undertakings;
- disposal of shares or stocks ensuring control over an undertaking or undertakings;
- entrusting the performance of a specific business activity, including the performance of this activity at various levels of trade, to individual entities within a capital group or to separate organisational units within the undertaking's structure;
- intervening in the structure of the undertaking or undertakings by means other than those mentioned above.

The new law should be in force within next 2 months.

Conclusion

These amendments to Polish Competition Law are likely to have a profound effect on international businesses with Polish operations, and may require a number of changes to ensure compliance.

For more information on how these changes may impact your business and our dawn raid services, including on-the-ground dawn raid cover, dawn raid plans and procedures, employee training and mock raids, please get in touch.

We have also used this experience to create “**Dawn Raids First Response**” – a free to download app providing easily accessible guidance should you be subject to a dawn raid. [Find out more >](#)