

## Competition Law

### Competition Law in Poland

Since Poland's transformation into a market economy, competition law has become of central importance. The principal objective of this body of law is to protect economic freedom by promoting competition in the marketplace. Competition provides businesses with the opportunity to compete on price and quality, in an open market and on a level playing field, unhampered by anticompetitive restraints. Consequently, there is a growing need for a good understanding of this constantly changing and complex subject.

#### Legal provisions

The Law on Competition and the Protection of Consumers' Interests of 16 February 2007 (the "**Competition Law**") is the principal vehicle for the control of **anti-competitive agreements** between firms, **abuse of dominant positions**, and **mergers**.

It sets out the main objectives of the Polish competition policy; which covers:

- **Prohibition of concerted practices, agreements and associations** between firms which may prevent, restrict, or distort competition and prohibition of abuse of a dominant position
- **Preventive supervision of mergers** which may create or strengthen a dominant market position; by approving or prohibiting the proposed alliances

**Other aspects** of the Polish competition law include the supervision of **aid granted by the State**, or through State resources in whatever form threatens to distort competition by favoring certain firms or the production of certain goods.

The Competition Law may be divided into three basic headings:

- **Anti-trust**
- **Merger control**
- **State aid**

#### Anti-trust regulations in Poland

In the Polish context, both the rules governing anti-competitive agreements and practices (cartels and other forms of collusion) and the rules prohibiting abuses of dominant positions can be referred to as anti-trust rules.

The most familiar example of an anti-competitive arrangement is an **agreement on prices**, where firms fix price levels jointly, as a result of which consumers are unable to take advantage of competition between suppliers to obtain competitive prices.

Other types of agreements have the object or effect of **fixing other conditions** for the operation of markets; for example, they may allo-

cate production quotas to firms or share markets between them. Such agreements are prohibited in Poland under Article 6 of the Competition Law and the Polish competition protection authorities have been entrusted with the responsibility of enforcing this prohibition.

The Competition Law also prohibits the abuse of market power, often referred to as "**market dominance**". A firm holds a dominant position if its economic power enables it to **operate on the market without taking account of the reaction of its competitors or of intermediate or final consumers**. There is a presumption that a market share of **40%** is large and hence indicative of a dominant position. However, there may be other factors sustaining the conclusion that a firm which has 40% of the market is not dominant.

### **Merger control in Poland**

The **control of mergers and acquisitions** is an important component of the competition policy. In general, only mergers which would significantly impede effective competition, in particular through creating or strengthening of a dominant market position, are prohibited in Poland. The system for monitoring merger transactions is also governed by the Competition Law. It imposes on firms the obligation to **seek clearance for certain large-scale mergers**. This obligation applies to all mergers where the **combined aggregate worldwide turnover** of the parties is more than **€ 1.000.000.000** or the **combined aggregate turnover** of the parties in the Polish territory is more than 50.000.000 € .

Such mergers must be announced to the **President of the Office for Competition and Consumer Protection** and cleared before the completion of the mergers. It means that the parties to such mergers are obliged to wait to complete the transaction until they have obtained a decision on clearance from the President of the Office, or for the lapse of a 2 month period from the date of the notification if the President of the Office has failed to deliver its decision. **Fines** may be imposed for a failure to notify or the provision of incorrect or misleading information.

Decisions of the President of the Office are subject to **judicial review** by the Polish courts.

### **State Aid in Poland**

EC Treaty prohibits any aid granted by the State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favoring certain firms or the production of certain goods. By giving certain firms or products favored treatment to the detriment of other firms or products, state aid seriously disrupts normal competitive forces.

The aid in question can take a variety of forms such as, for instance:

- State grants,
- Interest relief,
- Tax relief,
- State guarantees,

- Holding and provision by the State of goods and services on preferential terms.

Polish competition policy, however, allows exceptions to the ban on State aid where the proposed aid schemes comply with the conditions set out in the State Aid Law of 30 April 2004 and the relevant EC legislation. By way of example, it is allowed to grant aid having a social character to individual consumers, as well as aid aiming to make good the damage caused by natural disasters or other exceptional occurrences.

## Competition Protection Authorities

The Competition Law is enforced by the central administrative body called the President of the Office for Competition and Consumer Protection (**the Office**). The decisions and guidelines of the President of the Office, as well as court rulings issued **pursuant to appeals** against decisions of the President of the Office, may be published in the Official Journal of the Office.

Administrative decisions of the President of the Office related to competition law may be **appealed against** to a special court set up within the Regional Court of Warsaw (the **Competition and Consumer Protection Court**). Appeal applications must be filed within **two weeks** of the date of receipt of the relevant decision. The appellate proceedings are governed by the provisions of the Code on Civil Proceedings on commercial matters.

The Competition and Consumer Protection Court's ruling may be further **appealed to the Supreme Court**, whatever the amount involved, but only on questions of law (in Polish **kasacja**). The appeal must be filed within 2 months following the date of receipt of the ruling of the Competition Protection Court.

A **system of fines** is imposed by the President of the Office for failure to comply with the competition law.

The penalties are **discretionary** and may range:

- to up to **10%** of the total annual revenues of an entity if this entity enters into agreements which aim at preventing, restricting, or distorting competition, or it abuses its dominant position, or it proceeds with a merger before obtaining a clearance decision of the President of the Office
- to the PLN equivalent of **€50m** if no information was provided, or if incorrect or false information was provided during merger or antimonopoly inspection proceedings
- to the PLN equivalent of **€10,000** for each day of delay in complying with a decision of the President of the Office or the ruling of the Competition and Consumer Protection Court

In addition, the Competition Law provides for penalties which may be imposed by the President of the Office on a natural person acting as a **manager** or who is a **member of a managing body** of an entity or a group of entities (**up to a maximum 50 times the average remuneration**) for breaching the law.

Fines imposed by the President of the Office may be **appealed** to the Competition and Consumer Protection Court. Such fines constitute revenues of the State budget and may be collected pursuant to executive administrative proceedings (these proceedings consist of forced seizure of assets, and measures related to bank accounts and other property of a debtor).