

Kluwer Competition Law Blog

Amendments to Poland's competition law regime – toughening of the antitrust enforcement regime and simplification of merger control procedure

Robert Gago (Hogan Lovells) · Thursday, June 19th, 2014



Last week, the Polish Lower Chamber of Parliament agreed final changes to Poland's competition law regime. The new regime, which will be implemented by amendments to the Polish Act on Competition and Consumer Protection, is likely to come into force at the beginning of 2015.

Whilst the amendments simplify and accelerate merger control proceedings, they also toughen the antitrust enforcement regime, in particular by introducing the possibility of individual administrative fines on individuals for competition law breach.

The key changes are as follows:

Fines

The amendments introduce personal liability for individuals managing a company (in particular, members of a management board) who, as part of their function, intentionally by their actions or omissions allow a company to participate in an anti-competitive agreement. Potential fines can be up to PLN 2,000,000 (approximately EUR 500,000) for each individual. The fine is an administrative fine, and is not criminal.

The OCCP will be able to impose a fine also for participation in vertical agreements (i.e. between companies at different levels of the supply chain), and in horizontal agreements (i.e. between companies at the same level of the supply chain). Even former employees can be subject to liability, if the infringement took place at the time they were employed.

Individuals cannot be fined for activity which takes place before the amendments come into force. Individuals can benefit from a leniency regime, where they reveal infringements and fully cooperate with the OCCP. The personal liability of individuals under competition law does not apply to big-rigging. In these cases, individuals can be fined under separate criminal legislation.

Shortened merger control proceedings

The amendments introduce a two stage procedure for merger control review. Currently, the OCCP

has 2 months to review a merger case, but in practice the review of cases which raise issues can take much longer – even 9 months.

Transactions which do not raise significant competition issues will be reviewed in Phase I within 1 month. More complex transactions will be reviewed in Phase II within an additional 4 month period. It is expected that 80% of notifiable transactions will be reviewed in Phase I. The amendments foresee that the OCCP will present any concerns that they have regarding a transaction before issuing a decision. This will enable companies to offer modifications to a proposed transaction in order to avoid a prohibition decision.

Extension of exemption from notification requirement

Under current legislation, an exemption from the notification requirement applies to the takeover of control or the acquisition of assets where the target's Polish turnover does not exceed EUR 10 million in any of the two preceding years. The amendments extend this exemption to two additional types of transaction: a full legal merger and the creation of a joint venture. Such transactions will not be subject to notification if none of the parties exceeds turnover in Poland of EUR 10 million.

Other changes to merger control

The deadline for achieving divestments as part of any remedy package must now be kept confidential. This addresses concerns that there have been in the past regarding the disclosure of the time period which has potentially weakened the negotiating position of the seller.

Rules regarding turnover calculation will change as well, in particular for companies which exercise joint control over other companies. In such a case, the joint venture's turnover shall be apportioned proportionately to the number of all controlling entities.

Settlement – reduction of fines by 10 %

A new settlement procedure has been introduced. This allows for a 10% fine reduction for companies who voluntarily submit to a fine and waive their right to appeal the fine.

Leniency Plus

The leniency programme has been enhanced with a new leniency plus programme. Under this, additional fine reductions are available to companies who, when filing a leniency application about one anti-competitive practice, disclose to the OCCP information regarding another anti-competitive practice that is not known by the OCCP. For revealing the second practice to the OCCP, a company can receive full immunity for the second practice and up to a 30% reduction on the fine for the first practice.

Remedies

If an infringement of the prohibition of anti-competitive agreements or abuse of dominant position is found, the OCCP will now be able to impose not only an order on a company to refrain from the illegal practice in question, but also an obligation to apply remedies. This could include structural or behavioral remedies, such as the obligation to conclude an agreement or to give access to infrastructure on non-discriminatory conditions, or the obligation to separate organizationally a

particular activity (for example to separate a wholesale activity and to entrust it to another entity within its capital group).

Limitation periods

The OCCP will have more time to prosecute these infringements, which the companies have discontinued. The anti-monopoly limitation period will be five years (instead of the current one year limitation period) from the end of the year in which such illegal practices were discontinued.

Public warning about the practices infringing collective consumer interests

The amended law provides for a change to the scope of rights vested with the OCCP in relation to the protection of collective consumer interests. In the course of its proceedings, even before issuing an infringement decision, the OCCP will have the possibility to issue a public warning concerning activities which can result in significant financial loss or have disadvantageous effects for a broad circle of consumers. In such a warning, the OCCP will publicise the concerned company's practices and its probable effects for consumers. The warning may be published for example on the OCCP's official website.

Comment

The President of the OCCP, who devised these amendments, had two particular aims: firstly, to increase the effectiveness of OCCP's enforcement activities; and (ii) to simplify and shorten merger control procedures.

These changes involve the creation of new legal risks for companies, including personal liability for individuals involved in management, or the possibility of OCCP's interference in the company structure through the imposition of remedies. The simplification and shortening of merger control review in the frame of Phase I will facilitate many transactions. With regard to complex transactions, early notices of the OCCP's concerns will also be helpful.

The toughening of Poland's competition law regime is another important reason for companies to reinforce their competition law compliance programmes.

To make sure you do not miss out on regular updates from the Kluwer Competition Law Blog, please subscribe [here](#).

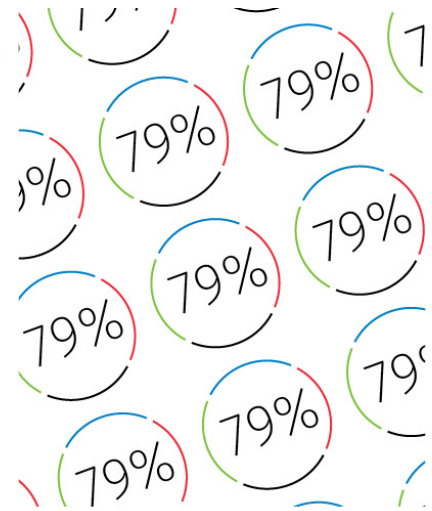
Kluwer Competition Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers are coping with increased volume & complexity of information. Kluwer Competition Law enables you to make more informed decisions, more quickly from every preferred location. Are you, as a competition lawyer, ready for the future?

Learn how **Kluwer Competition Law** can support you.

79% of the lawyers experience significant impact on their work as they are coping with increased volume & complexity of information.

Discover how Kluwer Competition Law can help you.
Speed, Accuracy & Superior advice all in one.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Thursday, June 19th, 2014 at 12:03 pm and is filed under [Source: OECD](#) > [Competition](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.