



CHALLENGES GROW IN COMPLYING WITH COMPETITION LAW AND CONTROLS

Compliance with competition law in the Polish legal system has always been a challenge for businesses. Recently, however, there has been an increase in the frequency of inspections by the Office of Competition and Consumer Protection (OCCP) and greater diligence in the way they are carried out.

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Entrepreneurs must understand that proper, timely preparation for such an inspection will reduce both the risk of the detection of possible violations by the OCCP during an inspection, as well as any stress on the enterprise being investigated. This type of inspection is not limited to a random examination of the company's records, it includes a detailed audit of the business' entire activity under competition law, the verification of documentation, as well as equipment belonging to the company - i.e. smartphones, company computers, and other information carriers, as well as the acquisition of other evidence, including from personal sources.

Why is it important to get this right?

Firstly, in the case of such an inspection, the company's reputation is at stake. The inspection results and any

detected violations are made public, so the entire industry in which the business operates can learn about the results.

Second, penalties for non-compliance with competition law are very high. The President of the OCCP may impose a fine of up to 10% of the turnover achieved in the fiscal year preceding the year in which the fine is imposed, if that entrepreneur, even if unintentionally, has violated the prohibitions under the Competition Law. The President of the OCCP may also impose a fine of up to PLN 2 million on a member of management if that person intentionally allowed the company to violate the prohibitions set forth in Article 6 of the Competition Law.

Third, according to the experience of previously inspected entrepreneurs, once the OCCP detects serious violations in a specific enterprise, inspections may be repeated.

What is competition?

By the term "competition" we mean, generally speaking, the whole process in which entities operating in the same market and carrying out their activities compete with each other to obtain the greatest possible percentage of the market and thus conclude the largest possible number of transactions by offering products or services under more favorable, i.e., competitive conditions. In general, competition is a very good and desirable phenomenon because where there is a monopoly on a given good or service, and there is no competition, consumers have fewer choices and less favorable price conditions. However, for competition to be a desirable thing, it must be fair, i.e., that competing entrepreneurs use only legitimate means when offering more favorable purchase terms to consumers. When examining competitive-

ness, it is also important to consider which share of the market each company has. It may happen that although there are many companies in the market, for example, only two of them have such a share in the market that only they can influence its development.

What influences fair competition?

First and foremost, fair competition influences the development of a given product or service. Each entrepreneur is interested in improving their products, as a result of which the consumer at the end of the chain has a chance to get a better quality product because in the case of a monopoly market, there is no competitor against whom the monopolist would need to compete. Under conditions of fair competition, we also observe such phenomena through a reduction in prices, an increase in the number of goods

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on the market, an increase in the activity of entrepreneurs, greater care for the consumer, and an increase in the level of consumption and quality.

Inspections?

As for the inspections carried out recently by the OCCP, as was already emphasized at the beginning, there has recently been a marked increase in the activity of this body which leaves more and more entrepreneurs wondering how to prepare for this. The role of the OCCP is to ensure that the law of fair competition is observed and that some entrepreneurs in a given market do not take unfair advantage (this leads to monopolism and therefore generates adverse effects for consumers).

How to prepare for a possible inspection?

First, you should start with an internal audit of your company. We recommend that an external entity conduct such an audit. Why? Because doing business in a certain area for many years, and being influenced by other entrepreneurs operating in the same market, often blurs the line between fair and unfair practices. The entrepreneur, so to speak, loses objectivity about the actions of company employees and thus is unable to focus on and identify violations. For example, a practice that has been replicated over a long period simply becomes commonplace, and only an external assessment can point out the risk that this practice may bring.

Our experience shows that usually, the first conversations during an audit lead to a denial that something wrong is going

on in the company in question. This is not due to any bad will on the part of the employees, but precisely because they are most often unaware that a given action may expose the company to a negative outcome of an OCCP inspection. Thus, such an audit includes interviews with employees, documentation analysis, contracts and business assumptions. In the extended variant, such an audit can - and should, in my opinion - also involve verifying employees' business tools to learn about the habits of a given company and catch possible risks. When the audit is completed a report that

sanitation measures, i.e. creating a database of legally correct documents, drawing up guidelines for employees so that they are aware of, among other things, what type of correspondence generates the greatest risks and how to reduce them, and then eliminate them. It is also important to organize training courses or webinars for employees so that they are periodically made aware of which way the authorities' audits are heading. An external auditor can, of course, additionally engage in analyzing - or creating, if none is already in place at the company - a set of market practices (both those

prohibited contractual agreements between entrepreneurs horizontally or vertically - when entities cooperating with each other operate at different levels of trade and thus may also constitute competitors to each other in terms of competition law. In addition, it is also worth considering, in such a situation, the relief provided by the law - that is, the leniency program. If a company has, for example, entered into an unlawful agreement restricting competition (e.g., joint price-fixing), it will face consequences in the form of a fine. However, once a company or individual admits to the OCCP that he or she has engaged in such practices and presents information and evidence to the OCCP indicating the existence of the practice, they can obtain a reduction in the fine or even a complete exemption from payment.

Some of the most recent audits by the OCCP that resulted in fines or charges against businesses included: Polska Grupa Farmaceutyczna (a fine of PLN 4 million), charges for Telewizja Polsat for violations in the organization of Polsat's New Year's Eve competition, UPC Polska (a fine of more than PLN 12.5 million), charges for Santander Bank Polska and charges for the OLX Group. There are many more such examples, so that is why a company's awareness of competition law compliance and regular internal audits are essential.

Finally, we encourage you to follow the news on the OCCP website, where you can read, among other things, the current results of the authority's inspections: uokik.gov.pl ●

“THE ROLE OF THE OCCP IS TO ENSURE THAT THE LAW OF FAIR COMPETITION IS OBSERVED AND THAT ENTREPRENEURS IN A GIVEN MARKET DO NOT TAKE UNFAIR ADVANTAGE

identifies potential areas of risk is then prepared.

It is important to note that this is not a personnel audit, so it is not intended to identify the "weak link" in the company and eliminate them. Such an action is contrary to the objectives of this type of audit. The main objective is to analyze and formulate post-audit conclusions by the audit team, on the basis of which the business can move on to

permitted by law and those that constitute unfair market practices) to educate and raise awareness.

When conducting an audit, it is, of course, possible that the audit team will encounter serious violations. In such a situation, it is advisable to take steps to prepare documentation that will serve as draft positions and explanations in case of an inspection. The key is to identify the existence of

