

PENALTIES FOR MANAGERS FOR INFRINGEMENT OF CONSUMER RIGHTS - NEW POWERS OF THE PRESIDENT OF THE OCCP

The Act Amending Certain Acts in Connection with the Strengthening of Oversight over the Financial Market and Protection of Investors on the Financial Market of 9 November 2018 extends the powers of the President of the OCCP considerably with regard to protection of the interests of consumers, and not only with regard to financial market services.

From 15 December 2018, under Art. 106b of the Act on Competition and Consumer Protection of 16 February 2007, the President of the OCCP will be able to impose high financial penalties on a **manager** who has wilfully – by his/her action or omission:

- allowed an undertaking to infringe the collective interests of consumers; or
- allowed an undertaking to use prohibited clauses in template agreements concluded with consumers.

According to the earlier explanations of the President of the OCCP on the penalties the President of the OCCP may impose for an anti-competitive agreement, a **manager** is usually a natural person who is a member of the management authority of an undertaking or who holds a managerial position (e.g. the director of a specific division). As a rule, this is a person managing an enterprise or part thereof who has an influence on the market behaviour of the undertaking. What is more, a **manager** may also mean anyone who informally manages an undertaking even though he/she does not formally hold a managerial position (e.g. the owner or his/her representative on the supervisory board).

Under the Act, a **manager** may be fined up to **PLN 2 million**, and a **manager** of a financial sector undertaking – as much as **PLN 5 million**. The penalties are administered in the same administrative decision in which the President of the OCCP fines the undertaking.

The following affect the amount of the penalty:

- the degree to which the **manager's** conduct impacted on the infringement;
- the revenue earned by the **manager** at the undertaking (the **manager's** remuneration), taking into account the duration of the infringement;

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- the duration of the infringement and its effects on the market and consumers.

The following are mitigating circumstances that could lower the penalty:

- acting under coercion;
- contributing to the end of the infringement or to the elimination of its effects; and
- cooperating with the President of the OCCP during the proceedings.

The following are aggravating circumstances that may result in a higher penalty:

- the **manager** obtained considerable benefits as a result of the infringement;
- the **manager** committed a similar infringement in the past.

To date, the President of the OCCP has been able to penalise natural persons only in the case of anti-competitive agreements (under the Act on Competition and Consumer Protection there are still no penalties of this type for abuse of dominant position). However, the first proceedings in which penalties of this type may be imposed on **managers** are still pending and (as far as we know) the President of the OCCP has not yet issued any such decision.

In light of the high number of proceedings in which the President of the OCCP imposes penalties on undertakings in consumer matters and the priority of such proceedings for the OCCP, it cannot be excluded that he will take wide advantage of his new powers to impose penalties on natural persons.

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