

MISSELLING AND ABUSIVE CLAUSES – THE TIMES ARE CHANGING

NEW REGULATIONS ARE COMING SOON

Effective 17 April 2016 an amendment to the Polish Act on Competition and Consumer Protection provides new mechanisms and powers to the Competition Authority to offer better protection to consumers, especially involving the misselling of financial products and control of standard contracts. Companies dealing with consumers should verify that their selling procedures, general terms and other standard contracts are adhering to compliance standards.

MISSELLING IN THE FINANCIAL SECTOR

The selling practices of financial products such as life and endowment policies, mortgages in foreign currencies and fast loans (Pol. *chwilówka*) granted by non-bank entities have long been subject to scrutiny and regulation. The new law targets (i) offering financial services inappropriate to a consumer's needs (e.g. the sale of long-term investment products to the elderly), and (ii) offering financial services to consumers in a manner inappropriate to the nature of the services (e.g. the sale of complicated and risky financial products over the phone). Companies found in violations may be forced to pay fines of up to 10% of their revenue from the previous year.

ABUSIVE CLAUSES IN STANDARD CONTRACTS WITH CONSUMERS

There is no doubt that current regulation is ineffective. The Competition Authority maintains a registry of more than six thousand abusive clauses that are prohibited. Many of these clauses are, however, still widely used on the market. Under the new law, once the Competition Authority declares a clause abusive and bans its use, that decision is effective regarding all contracts a company enters into with consumers. Use of the clause will be banned going forward. As to contracts already in effect at the time of the decision, they will have to be amended to delete the prohibited provision(s). The Competition Authority has the right to order that its decision be published and that affected companies inform their customers about their decision. Companies may be fined up to EUR 10,000 for each day of non-compliance as well as up to 10% of revenue from the previous year. The limitation period has been extended from 1 year to up to 3 years from the end of the year in which the prohibited practice was abandoned.

NEW POWERS OF THE COMPETITION AUTHORITY

Notable new powers of the Competition Authority:

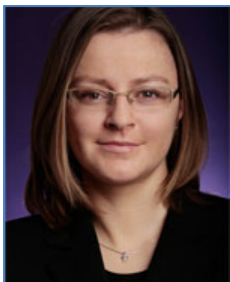
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- (i) In order to obtain evidence (testimony or record) and with court consent, a Competition Authority inspector may pretend to be interested in purchasing goods or services just to confirm legal compliance (i.e., to act as a "mystery shopper").
- (ii) A temporary decision ordering a company to discontinue certain practices infringing collective consumers' rights may be issued upon establishing severe and difficult to overcome threats to consumers. Such decisions remain binding during appeals.
- (iii) The Competition Authority may use public radio and TV to publicize prohibited practices.

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For more information about our services, please contact:



Anna Dobosz
Legal Advisor / patent attorney trainee
anna.dobosz@wolftheiss.com
T: +48 22 3788 919



Marcin Rudnik
Legal Advisor
marcin.rudnik@wolftheiss.com
T: +48 22 3788 948

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Wolf Theiss
Schubertring 6
AT – 1010 Vienna

www.wolftheiss.com