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## **The age of antitrust litigation in Europe has arrived**

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The changes imposed by the Directive are substantial. The Directive introduced private enforcement as an effective method of fighting unfair competition. Private enforcement is allowed independently from any regulatory proceedings, which means that antitrust claims can be launched before, during, or after the relevant regulatory authority (such as the Urząd Ochrony Konkurencji i Konsumentów in Poland) has tried the case. Private enforcement can be sought by any entity, which suffered loss as a result of an infringement of competition law, regardless of whether it is a direct or indirect purchaser of a product or service.

Under the Directive, the injured party has the possibility to claim full compensation, that is both *damnum emergens* and *lucrum cessans*. The claimant can now request access to the documents of the company suspected of a breach of the antitrust regulations, provided that such a request meets the proportionality rule.

What is more, the court now has the power to assess the amount of the loss, if it cannot be evaluated on the basis of available evidence. However, this is only possible if there is no doubt that the loss was actually suffered. The court can turn to the regulatory authority for assistance in assessing the loss.

**The Directive also introduced a rebuttable presumption that cartels and any other infringement of competition law have caused harm. Previously, the injured party had to prove this on its own the above-mentioned circumstance.**

The Directive reaffirms the joint and several liability of co-infringers. This means that each of the breaching companies has a duty to fully compensate the loss, and the injured party can claim full compensation from each of the breaching companies until their claim is fully satisfied.

The above mentioned solutions are meant to achieve the aim of the Directive, which is to facilitate the effectiveness of antitrust claims, discourage potential infringers, and to improve the social trust in regulatory authorities.

Seeking antitrust claims in Poland is not a widespread practice at the moment, which provokes some entities on the market to gain advantage over their competitors by utilizing acts of unfair competition.

Private enforcement in the Polish legal system is qualified as an ordinary compensation claim. The claimants thus often have problems in the sphere of collecting all relevant evidence as it is often hard to prove that the monopolist's actions are wrongful and culpable.

Poland has implemented the Directive. The new statute on seeking antitrust claims entered into force in May 2017.

The new law applies to infringements of competition law which occurred after the law entered into force.

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