

Cartel Regulation

The application of competition regulation
in 46 jurisdictions worldwide

2012

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Latvia

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Legislation and jurisdiction

1 Relevant legislation

What is the relevant legislation and who enforces it?

The current competition rules are set out in the Competition Law, effective as of 1 January 2002. Before then, competition matters were regulated by the Competition Law of 1997. Due to the short history of competition law in Latvia, Latvian case law dealing with competition matters is relatively slim.

The Latvian Competition Council, the authority enforcing the competition rules in Latvia, was established in January 1998. The Competition Council consists of two members and a chair, all appointed for a five-year term by the Cabinet of Ministers upon recommendation of the minister of economics. Decisions of the Competition Council are taken by an absolute majority vote. The day-to-day work of the Competition Council is carried out by the Executive Office, managed by the office director. The work of the Office is organised in three departments. At the time of writing, the Competition Council employs 45 staff.

2 Proposals for change

Have there been any recent changes or proposals for change to the regime?

Currently, there are no proposals for changes to the regime. The most recent change was the reduction of the number of Competition Council members.

3 Substantive law

What is the substantive law on cartels in the jurisdiction?

Article 11 of the Competition Law closely follows the wording of article 101 of the Treaty of the Functioning of the European Union (ex article 81 of the EC Treaty), declaring as prohibited agreements between undertakings having as their object or effect the prevention, restriction or distortion of effective competition. Article 11 of the Competition Law includes a non-exhaustive list of practices that are prohibited:

- any form of direct or indirect fixing of prices or tariffs, or agreement on the principles of their formation, as well as the exchange of information relating to prices or sales terms;
- restrictions or controls on the volume of production or sales, markets, technical development or investment;
- the allocation of markets by territory, customers, suppliers or other conditions;
- provisions that make the conclusion, amendment or termination of a transaction with a third party subject to the acceptance of obligations which, according to commercial practice, are not relevant to the particular transaction;

- participation or non-participation in tenders or auctions, or regarding provisions for participation (or non-participation), except for cases when competitors have publicly announced their joint tender and the purpose of such tender is not to hinder, restrict or distort competition;
- applying discriminatory conditions to equivalent transactions with third parties, thus creating a competitive disadvantage for such third parties; and
- action (or failure to act) as a result of which another market participant is forced to leave a relevant market or whereby the entry of a potential market participant into the market is made more burdensome.

The prohibition applies to both vertical and horizontal agreements.

The term 'cartel' is not defined under the Competition Law; however, Regulation No. 798 of the Cabinet of Ministers (effective as of 3 October 2008) contains a definition of 'horizontal cartel agreements'. They are defined as agreements between the competitors aimed at the prevention, restriction or distortion of competition between themselves, including agreements on any form of direct or indirect fixing of prices or tariffs or agreement on principles of their formation, as well as the exchange of information relating to prices or sales terms, restrictions or controls on the volume of production or sales, markets, technical development or investment, allocation of markets by territory, customers, suppliers or other conditions, participation or non-participation in tenders or auctions or regarding provisions for participation (or non-participation).

The prohibited agreements are allowed if they:

- contribute to improving the production or distribution of goods or promote economic progress;
- allow consumers a fair share of the resulting benefit;
- do not impose on the respective market participants restrictions that are not indispensable for the attainment of these objectives; and
- do not allow the participants to eliminate competition in respect of a substantial part of the products in question.

Latvian competition law has preserved a notification system. Therefore, a prima facie prohibited agreement may be notified to the Competition Council prior to entering the agreement or prior to the agreement becoming effective and provided an investigation has not been commenced. The Competition Council shall provide unconditional or conditional exemption to the agreements that satisfy the above efficiency requirements.

So far very few prohibited agreements have been notified to the Competition Council for exemption and none of them has involved agreements that would qualify as horizontal cartel agreements. As a matter of practice, it seems highly unlikely that any horizontal cartel agreement could qualify for such an exemption.

Council Regulation No. 1/2003 requires national competition authorities, when applying national competition law to agreements or concerted practices, to ensure that the application of national competition law does not lead to the prohibition of agreements or concerted practices that may affect trade between member states but that do not restrict competition within the meaning of article 101(1) TFEU or that fulfil the conditions of article 101(3).

Latvian law does not provide criminal liability for breach of cartel provisions. Liability is either administrative or civil.

4 Industry-specific offences and defences or antitrust exemptions

Are there any industry-specific offences and defences or antitrust exemptions?

No.

5 Application of the law

Does the law apply to individuals or corporations or both?

The provisions of the Competition Law apply to any market participant. A market participant is defined broadly as any person (including a foreign person) carrying out or intending to carry out economic activities in the territory of Latvia or whose activities affect or are capable of affecting competition in the territory of Latvia.

6 Extraterritoriality

Does the regime extend to conduct that takes place outside the jurisdiction? If so, on what legal basis does the authority claim jurisdiction?

The definition of a market participant under Latvian law also covers foreign persons and activities performed outside of Latvia if such activities affect or are capable of affecting competition in the territory of Latvia.

Investigation

7 Steps in an investigation

What are the typical steps in an investigation?

The Competition Council may initiate cartel investigation proceedings on its own initiative or on the basis of an application by a private party or information from a public entity. Proceedings may also be initiated based on cooperation with foreign authorities or as a result of a tip-off from a foreign competition authority.

Dawn raids are becoming an increasingly popular means of conducting investigations. Still, it is not uncommon for the Competition Council to provide a prior notice to the undertaking subject to investigation of the planned visit to review documents and conduct interviews.

The final decision in an investigation must be taken by the Competition Council within six months from the date when the investigation proceedings were initiated. The investigation may be prolonged by a decision of the Competition Council if, due to objective justifications, additional time is required for the completion of the investigation. In this case, the investigation should be completed within one year of the date of the initiation of proceedings. If the completion of an investigation requires long-term study, the Competition Council may extend the time limit for another year. Thus, the maximum period of a cartel investigation may not exceed two years from its date of initiation.

The number of provisions under the law dealing with the investigation process is rather limited, leaving the Competition Council relatively wide discretion. The Competition Council is required, after obtaining all the data necessary for taking a decision, to invite the parties subject to investigation to review the file and provide their comments. The Competition Council is required to provide notice to

the parties that the necessary facts have been established. In practice, the notice comprises a relatively extensive account of the facts and preliminary conclusions made, however, it does not include any indications in respect of the level of fines that the Competition Council intends to apply in case of finding infringement. The parties to the investigation have the right to review the file, express their opinion and submit additional information within a term of 10 days from the date of notification. No hearings are held allowing parties to defend their position orally, although it is possible to request a meeting with the representatives of the Competition Council to discuss the case.

In cases where the EU competition rules are applied, prior to taking the final decision, the draft decision of the Competition Council has to be referred to the European Commission for comments.

8 Investigative powers of the authorities

What investigative powers do the authorities have?

The investigative powers of the Competition Council in cartel investigations are rather broad.

The Competition Council has the right to request all necessary information, including confidential information, from any natural or legal persons, or state and municipal institutions, as well as to receive oral or written explanations from the relevant persons.

The Competition Council may conduct inspection visits, including dawn raids (visits without advance notice), to the market participants. During the inspections, the officials of the Competition Council may request oral or written explanations, review any documents and receive these documents or copies thereof.

The Competition Council has the right to seize relevant documents and property, including computers, etc.

Regarding entrance into vehicles, private residences and other moveable or immovable property of market participants and the inspection of property and documents contained therein, searches are conducted on the basis of a court decision and in the presence of the police. If there is a suspicion that the relevant documents may be located in third parties' moveable or immovable property, the Competition Council also has the right to inspect such property, subject to the court's decision.

The Competition Council may fine market participants for failure to comply with its requests for information, documents, explanations or access to premises and other property. The fines range from 50 lats to 10,000 lats for legal entities and up to 500 lats for natural persons.

Although not explicitly stated in the Competition Law, the duty to cooperate during the investigation is limited by the right to remain silent, namely not to incriminate oneself. However, the privilege against self-incrimination does not cover handing over the documents that the company must produce to the officials upon their request. Such documents have to be produced even if they contain information establishing the company's participation in illegal activities. The Competition Council is entitled to draw adverse conclusions from a failure to cooperate.

International cooperation

9 Inter-agency cooperation

Is there inter-agency cooperation? If so, what is the legal basis for, and extent of, cooperation?

The Competition Council regularly cooperates at an international level with other competition authorities. According to the Competition Law, upon request from the competition authorities of other member states, the Competition Council is entitled to carry out investigative activities in relation to Latvian market participants.

The Competition Council is entitled, and has a duty, to apply EU Competition Law and thus closely cooperates and shares competences with the EU Commission, DG Competition and the competi-

tion authorities of the other member states. The Competition Council participates in the European Competition Network (ECN), which is a formal cooperation forum for European competition authorities and the European Commission. The ECN enables the authorities to share information on pending cases, to allocate enforcement work and to coordinate their investigations, namely in international cartel cases. Competition authorities increasingly aim to coordinate their investigations and conduct simultaneous dawn raids in various countries so as to maintain the element of surprise of inspections.

In addition to the ECN, the Competition Council occasionally informally contacts neighbouring competition authorities to coordinate their approach.

The Latvian Competition Council is also a member of the International Competition Network and cooperates with the OECD.

10 Interplay between jurisdictions

How does the interplay between jurisdictions affect the investigation, prosecution and punishment of cartel activity in the jurisdiction?

EU Competition Law is directly applicable in Latvia and the Commission and the Competition Council apply these rules in close cooperation. The Competition Council is entitled to initiate proceedings for breaches of the EU competition rules and is obliged to assist the Commission in its investigations. The Latvian courts are also entitled to establish violations of EU competition rules and decide on granting the EU Commission authority to carry out investigations in the territory of Latvia. If the Latvian court establishes a violation of the EU competition rules, it is required to provide the EU Commission with a copy of the decision within seven days after issue of the full decision.

The Competition Council and the police shall assist the EU Commission when carrying out cartel investigation proceedings in Latvia.

The Competition Council tends to pay particular attention to sectors that have been identified as problematic or suspect by other national competition authorities or the Commission.

11 Adjudication

How is a cartel matter adjudicated?

The national authority responsible for the enforcement of the Competition Law and EU competition rules in Latvia is the Competition Council, operating under organisational supervision of the Ministry of Economics. The Competition Council performs investigations and also makes the final administrative decision in cases.

The national courts are also entitled to establish infringements of the Competition Law and EU competition rules, although so far no cartel cases have been decided by national courts under the private enforcement procedure.

12 Appeal process

What is the appeal process?

All decisions of the Competition Council, excluding certain interim procedural decisions, may be appealed in the Administrative Regional Court within a term of one month from the effective date of the decision. Decisions by the Administrative Regional Court may be appealed on points of law to the Administrative Department of the Senate of the Supreme Court.

Decisions of the district court of general jurisdiction granting permissions to exercise certain investigative activities can be appealed to the presiding judge of the court.

13 Burden of proof

With which party is the burden of proof?

According to administrative procedure law, the administrative authority shall prove the facts upon which it bases its decision. If the

decision of the Competition Council is appealed, the Competition Council may only refer to those grounds that have been stated in its decision. No additional evidence may be provided in court.

The market participant has a duty to prove the facts upon which it relies to challenge the decision of the Competition Council. According to the principle of objective investigation, the administrative court itself shall collect evidence if the evidence submitted by the parties is not sufficient.

Sanctions

14 Criminal sanctions

What criminal sanctions are there for cartel activity? Are there maximum and minimum sanctions? Do individuals face imprisonment for cartel conduct?

Cartel activity is not a criminal offence under Latvian criminal law. However, criminal or quasi-criminal sanctions may be imposed on an executive for a failure to comply with a decision of the Competition Council. Depending on the gravity of the infringement, measured by reference to recidivism and consumer harm, sanctions applied for the above offence are imprisonment for up to two years, community service or a fine of a maximum of 100 times the minimum monthly salary (currently 200 lats), with or without restrictions on engaging in commercial activities for between two and five years. Pecuniary sanctions can also be imposed on a non-compliant company. So far, the above criminal sanctions have not been applied in Latvia.

15 Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

Horizontal cartel agreements shall qualify as the gravest violation of the Competition Law. The maximum amount of fine can reach 10 per cent of the net turnover for the previous financial year and it shall not be less than 500 lats.

16 Civil and administrative sanctions

Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?

According to the Competition Law any person that has suffered losses due to the infringement of the Competition Law is entitled to claim compensation of losses and statutory interest from the guilty market participant. Thus, in addition to the fine imposed by the Competition Council for the breach of the Competition Law, the guilty market participant might be obliged to compensate losses caused to any third party as a result of anti-competitive conduct.

As noted above, cartel activity is not a criminal offence under Latvian criminal law.

17 Private damage claims and class actions

Are private damage claims or class actions possible?

The Competition Law expressly provides that any person that has suffered losses due to the infringement of the Competition Law is entitled to claim compensation of losses and statutory interest from the guilty market participant. The award of compensation is within the jurisdiction of the courts of general jurisdiction. So far, there have been no reports of awards of damages in claims for infringement of the competition rules.

The right to claim damages covers compensation for actual loss, such as expenses, price differences, lost profits and other direct or indirect economic damage resulting from the anti-competitive conduct. A claim for damages is subject to a general 10-year limitation period, which commences on the date on which the person became aware, or should have become aware, of the damage. Punitive or

exemplary damages are not available under Latvian law. Similarly, class actions in their usual meaning are not possible in Latvia.

18 Recent fines and penalties

What recent fines or other penalties are noteworthy? What is the history of fines? How many times have fines been levied? What is the maximum fine possible and how are fines calculated? What is the history of criminal sanctions against individuals?

In line with the approach announced by DG Competition, the Competition Council has announced the fight against cartels to be one of its top priorities. Since 2006, the Competition Council has been fining on average three to four cartels per year.

At the end of 2009 the Competition Council adopted a decision by which SIA Samsung Electronics Baltics and four major wholesalers were found to be guilty for several 'hard-core violations', ie, resale price maintenance, market partitioning and facilitation of horizontal price fixing (decision in case No. P/08/06/18 on violation of the provisions of article 11, items 1 and 3 of the Competition Law and article 81(1) of the EC Treaty, by SIA Samsung Electronics Baltics et al of 30 October 2009). The decision was adopted following a dawn raid carried out by the Competition Council almost simultaneously in the offices of all major wholesalers of Samsung TV sets. The fines imposed on the members of the alleged cartel are the highest fines that have so far been applied by the Competition Council. SIA Samsung Electronics Baltics was fined 4,099,942.75 lats (3.4 per cent of net turnover in 2008). The decision was appealed by all five undertakings subject to the fine. Three undertakings entered into settlement agreements with the Competition Council by which the fines were substantially reduced. The appeals of the remaining two undertakings were rejected and the decision of the Competition Council was upheld by the court.

At the beginning of 2011, the Competition Council by its decision of 3 May 2011 (case No. P/09/05/4) has joined the growing number of competition authorities that have fined banks for agreeing on multilateral interchange fees (MIF). In Latvia, fines totalling almost 5.5 million lats have been imposed on 22 banks. The multilateral agreements concluded by the banks in 2002 have been characterised by the Competition Council as distortions of competition and therefore illegal. According to the Competition Council, the principal negative effect of MIF was the appearance of a 'floor' beneath merchant service charges. The authority did not attach much weight to evidence that in an appreciable number of cases the banks had in fact set merchant service charges below MIF. Merchants were said to have included the costs into prices, thus mediating consumer harm. The Competition Council was equally unimpressed by a demonstration that in the absence of domestic MIF the generally higher regional cross-border MIF would have been applicable, and that the costs of handling banknotes and coins well exceed the costs of electronic payment processing. Of note is the fact that the Competition Council did not qualify MIF arrangement as a cartel, although it stated that the arrangement comprises restriction of competition by object and calculated fines within the bracket set for cartels and market partitioning. The majority of the fined banks have appealed against the decision of the Competition Council and judicial review is pending.

Decisions of the Competition Council increasingly show that it is determined to impose higher fines on the participants of cartel agreements. Until 2008, the highest fine applied by the Competition Council to members of cartels constituted 1.5 per cent of the net turnover for the previous financial year. In 2008, a fine in the amount of 4 per cent of the net turnover for the previous financial year was applied to one of the cartel members (decision in case No. P/08/10/4 on violation of the provisions of article 11, item 5 of the Competition Law, by SIA GSK Auto et al of 17 September 2008). The fine imposed on SIA Samsung Electronics Baltics is a record fine in absolute terms.

As stated above, participants to cartel agreements may become subject to an administrative fine of up to 10 per cent of their net turnover for the previous financial year and the law does not set a maximum amount of fine. When determining the fine amount, the Competition Council has to consider the gravity and duration of the infringement. According to Regulation No. 796 of the Cabinet of Ministers (effective as of 3 October 2008), all infringements are divided into three groups (minor infringements, serious infringements and very serious infringements). According to this regulation, horizontal cartel agreements qualify as very serious infringements. For very serious infringements, fines shall be calculated from 1.5 to 7 per cent of the net turnover for the previous financial year for each cartel participant.

If the infringement lasts for more than one year, the fine shall be increased by up to 0.5 per cent. If the infringement lasts for more than five years, the fine shall be increased by between 0.5 and 1 per cent. Mitigating and aggravating circumstances are then taken into account to determine the final amount of the fine. Furthermore, the regulation contains a list of mitigating and aggravating circumstances. The lowest fine that can be applied is 500 lats.

Cartel activity as such is not a criminal offence under Latvian criminal law. So far, there are no reported decisions on criminal liability of individuals for failure to comply with decisions of the Competition Council (see question 14).

Sentencing

19 Sentencing guidelines

Do sentencing guidelines exist?

Regulation No. 796 of the Cabinet of Ministers contains the rules that must be observed by the Competition Council when determining fines for cartel activities. Apart from administrative practice, no other guidance is available. On almost all occasions, the Competition Council refers to the proportionality requirement and without any explanation makes a downward adjustment of the amount calculated as a percentage of turnover.

20 Sentencing guidelines and the adjudicator

Are sentencing guidelines binding on the adjudicator?

The rules set forth in the aforementioned Regulation No. 796 are binding. However, the courts have interpreted proportionality as an overarching principle, which can require or allow going below minimum fines.

21 Leniency and immunity programmes

Is there a leniency or immunity programme?

The leniency programme was first introduced in October 2004. Currently, the framework of the leniency programme is set forth in Regulation No. 796 as of 3 October 2008. Regulation No. 796 in general mirrors the leniency policy applied by the European Commission. The policy is described in more detail under question 22.

At the time of writing, there have been no reports of an undertaking operating in Latvia resorting to the possibilities afforded by the leniency programme. During the investigation of one bid-rigging case (decision in case No. P/08/10/4 of 17 September 2008), one of the companies asked for full immunity due to the fact that it had cooperated with the Competition Council. The Council rejected this motion due to the fact that the information on the cartel agreement was submitted only after the initiation of the investigation by the Competition Council and the company started cooperation with the Competition Council only at the very end of the investigation. However, the Competition Council considered that the cooperation could be considered as a mitigating circumstance and the applicable fine was substantially reduced.

22 Elements of a leniency or immunity programme

What are the basic elements of a leniency or immunity programme?

The leniency programme has three basic stages: full immunity, a reduction of the fine of between 30 and 50 per cent and a reduction of the fine of between 20 and 30 per cent.

Based on Regulation No. 796 of the Latvian Cabinet of Ministers, full immunity may be granted if:

- the undertaking is the first to apply to the Competition Council for full immunity providing in the written application the following information as far as available:
 - names and addresses of the members of the cartel;
 - description of the cartel: aim, relevant markets affected, principles of operation, size of the relevant markets affected, duration of the cartel; and
 - evidence at the disposal of applicant and other related information, which is sufficient for the Competition Council to initiate an investigation;
- at the moment of initiation of an investigation the Competition Council does not possess sufficient evidence to initiate an investigation or to find an infringement;
- the undertaking has not (prior to submission of its application) concealed, destroyed or falsified evidence related to the cartel;
- the undertaking upon its own initiative or based on the request of the Competition Council has provided all available evidence and information, has truly, actively and continuously cooperated with the Competition Council throughout the proceedings, and is neither the leader nor has coerced other participants to take part in the cartel;
- the undertaking has immediately ceased participation in the cartel, unless the Competition Council has ordered otherwise; and
- the undertaking has not disclosed to third parties the fact of the application for leniency or cooperation with the Competition Council.

In addition, the application for full immunity must be accompanied by a written statement certifying that the applicant has complied and will comply with the above requirements for full immunity.

23 First in

What is the importance of being 'first in' to cooperate?

Full immunity is available only to the 'first in' to cooperate and provides for a full release from the fines to be imposed.

24 Going in second

What is the importance of going in second? Is there an 'immunity plus' or 'amnesty plus' option?

A cartel member that is not entitled to a full immunity may apply for reduction of fines if it:

- has not (prior to submission of application) concealed, destroyed or falsified evidence related to the cartel;
- upon its initiative or based on the request of the Competition Council, has provided all available evidence and information and has truly, actively and continuously cooperated with the Competition Council throughout the proceedings;
- has immediately ceased participation in the cartel, unless the Competition Council has ordered otherwise; and
- has not disclosed to third parties the fact of the application for leniency or cooperation with the Competition Council.

In addition, the application must be accompanied by a written statement certifying that the applicant has complied and will comply with the above requirements for a reduction of fines.

The following reduction of fines will be granted:

- a 30 to 50 per cent reduction is available for the first to provide information; and
- a 20 to 30 per cent reduction is available to any subsequent parties.

If the fine is reduced, the minimum fine shall not be less than 500 lats.

25 Approaching the authorities

What is the best time to approach the authorities when seeking leniency or immunity?

If the market participant has decided to cooperate with the Competition Council, it is advisable to do so as promptly as possible to be in a position to derive the benefits of being 'first in'. However, the market participant should assess whether it can comply with the criteria set forth in the regulation to benefit from full or partial immunity.

26 Confidentiality

What confidentiality is afforded to the leniency or immunity applicant and any other cooperating party?

According to Regulation No. 796, information regarding the identity of a participant of a cartel that has filed a leniency application shall be treated as confidential until the decision on infringement has been taken. Where the Competition Council decides that there has been no infringement of the Competition Law and terminates the case, the information regarding the identity of those market participants that cooperated with the Competition Council shall not be disclosed in the decision. In general, market participants who have decided to cooperate must take into account that the publication of a decision finding infringement and eventual court proceedings can result in the identification of the leniency applicant.

27 Successful leniency or immunity applicant

What is needed to be a successful leniency or immunity applicant?

There are no special standards. However, the applicant has to make sure that all the criteria set in Regulation No. 796 for full immunity or reduction of fine are met.

28 Plea bargains

Does the enforcement agency have the authority to enter into a 'plea bargain' or a binding resolution to resolve liability and penalty for alleged cartel activity?

The Competition Council may close its investigation without adopting a decision on its merits if it considers that doing so would be useful in light of the commitments proposed by an undertaking. The Competition Council may also conclude an administrative agreement in order to terminate court proceedings. In the administrative agreement, the Competition Council can agree to reduce the fine applied for the infringement, and change the legal obligations imposed on the market participants involved.

Such admission of guilt by one party can later be used by courts as evidence against other parties of alleged cartel activity (Administrative Regional Court judgment of 26 May 2011 in case No. A43003610). In late 2009 the Competition Council fined Plus Punkts SIA, Narvesen Baltija SIA and Preses Apvieniba SIA for an illegal agreement to simultaneously start charging a commission fee for retail sales of recharge codes to users of prepaid mobile telephone connections. All three addressees of the decision appealed, yet during the litigation Plus Punkts concluded an administrative agreement with the Competition Council. In the agreement, Plus Punkts conceded that it had infringed the Competition Act and undertook to withdraw the appeal in exchange for a reduction of fine from 24,600 lats to 14,760 lats. The appeal of the other two addressees

of the decision – Narvesen Baltija and Preses Apvieniba – was dismissed. However, the evidence collected by the Competition Council was rather sparse, and a strong case could have been made that the simultaneous introduction of a commission fee was ‘innocent’ parallel behaviour by members of an oligopoly, therefore for the most part the court based its reasoning on the admission of infringement by Plus Punkts.

Civil liability cannot be avoided or limited by means of an administrative agreement.

29 Corporate defendant and employees

What is the effect of leniency or immunity granted to a corporate defendant on its current and former employees?

The provisions of the Competition Law apply to undertakings only. Thus, penalties under the Competition Law may not be imposed on individuals in their capacity as employees of the undertaking. Immunity does not affect the liability of the management towards shareholders under corporate law, or of employees (current and former) towards the company under employment law.

30 Cooperation

What guarantee of leniency or immunity exists if a party cooperates?

Once a leniency application (see question 31) is filed with the Competition Council, the Council will examine it and will notify the applicant as to whether it is accepted or rejected within five days from the date of filing. The decision by which the full immunity or partial reduction of the fine is granted is taken only at the end of the investigation when the final decision on infringement of the Competition Law is adopted. The market participant will benefit from the leniency programme only if it complies with all the criteria described in questions 23 and 24. This, inter alia, means that the market participant has to actively cooperate with the Competition Council during the whole process of investigation. Once the criteria are satisfied, the Competition Council has no discretion on whether to afford leniency protection.

31 Dealing with the enforcement agency

What are the practical steps in dealing with the enforcement agency?

Regulation No. 796 introduces a marker system that allows market participants to apply to the Competition Council for the first-in position in relation to submission of a leniency application. The application for first-in position has to be written and must contain information on the participants of the cartel, its aims, nature and duration in the relevant markets affected. The Competition Council will notify the applicant on whether the first-in application is accepted within five days of the date of submission of the

Update and trends

For the past few years the Competition Council has been constantly monitoring the Latvian fuel retail market. In 2007 the Competition Council closed an investigation into alleged abuse of collective dominance against three companies engaged in fuel retail sale – Latvija Statoil, Neste Latvija and Lukoil Baltija R. The Council stated that the three companies held a collective dominant position but no abuse of the collective dominant position was found. In May 2011 the Competition Council opened an investigation into practices of the same three fuel retailers, alleging coordinated conduct in respect of pricing policies. Investigation in the case is ongoing. The approach of the Competition Council towards pricing issues in the fuel retail market demonstrates a growing tendency for the competition authority to explore all mechanisms available under competition law to constrain unwelcome pricing, concentration and other developments in certain strategically important industries.

application, indicating the date by which complete application for the full immunity has to be submitted.

A market participant wishing to take advantage of the leniency programme must file a complete leniency application with the Competition Council, stating the grounds for granting full immunity from fines or a reduction of the fine (see questions 22 and 24).

Applications can be submitted either by the market participant itself or by counsel acting on behalf of the market participant on the basis of power of attorney. All applications must be submitted in person to the chair of the Competition Council or a person authorised by it.

32 Ongoing policy assessments and reviews

Are there any ongoing or proposed leniency and immunity policy assessments or policy reviews?

At the time of writing, there are no proposed leniency or immunity policy assessments or policy reviews.

Defending a case

33 Representation

May counsel represent employees under investigation as well as the corporation? Do individuals require independent legal advice or can counsel represent corporation employees? When should a present or past employee be advised to seek independent legal advice?

Generally, there are no strict rules regarding the representation of employees and corporations. The main concern is normally general conflicts of interest, if any exist. The fact that there is no employee liability under the Competition Law should be taken into account.

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The necessity of legal advice for employees should be determined on a case-by-case basis.

34 Multiple corporate defendants

May counsel represent multiple corporate defendants?

Yes, unless such counsel has a conflict of interest.

35 Payment of legal costs

May a corporation pay the legal costs of and penalties imposed on its employees?

The law does not prohibit a market participant from covering the legal costs of its employee; however, such costs will be treated as unrelated to business for accounting purposes. If the employee is sued by the corporation for exceeding his or her powers, there will be no grounds to cover his or her legal costs.

36 Getting the fine down

What is the optimal way in which to get the fine down?

The amount of the fine in Latvia is determined by the Competition Council. To obtain the leniency treatment, as stated in question 31, the market participant must submit an application to the Competition Council and satisfy all the criteria required by law. When determining the amount of the fine, the Competition Council should take into account mitigating and aggravating circumstances. Therefore, the existence of mitigating circumstances and the provision of evidence of such may reduce the amount of the fine.

The courts do not intervene with the discretion of the Competition Council to determine the appropriate level of fines, however, in cases where the level of fines is determined in violation of the provisions of Regulation No. 796 of the Cabinet of Ministers or otherwise in violation of the general fining principles, the court may set aside the decision of the Competition Council and refer the case for repeated review by the Competition Council.

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