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## Baltic Competition Law News May 2016

**Dear Reader,**

In this Baltic competition law newsletter prepared by EU & Competition practice group of COBALT you will find an update on recent developments which we have selected for their noteworthiness.

We will be happy to answer your specific questions or to assist in dealing with a particular competition law issue.

You may follow us on Twitter [@COBALT\\_Legal](https://twitter.com/COBALT_Legal) to read these and other office news.

With kind regards,  
COBALT Law office

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## LATVIA



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### Amendments to the Latvian Competition Law

[Latvijas Vēstnesis, Nr.104 \(5676\), 31.05.2016.](#) [Latvian only]

The Latvian Parliament has adopted the long-awaited amendments to the Competition Law. The amendments will enter into force on 15 June 2016. They introduce several important changes.

#### Powers of the Competition Council

The Competition Council (CC) gains new tools to obtain information, and to ensure execution of decisions:

- in prohibited agreements investigations, the CC will have the right to access the data stored by electronic communications service providers, such as caller and receiver telephone numbers, subscriber's identification data, IMEI and IMSI numbers, IP address. Access will be granted with the consent of the data subject or with the permission of a judge;
- in all infringement cases, with the permission of a judge, the CC will be entitled to order a bank to disclose confidential client information, namely, information about the client and his / her transactions;
- the CC will be entitled to impose a fine for failure to comply with an obligation imposed by the CC and aimed at addressee's market behaviour. The daily amount of fine may be up to 5% of the average daily net turnover, but not less than 250 EUR;
- penalties for procedural misconduct will be increased. A fine of up to 1% of net annual turnover may be imposed for failure to provide information, provision of misleading information, and non-compliance with the requests of CC officials.

Access to electronic communications metadata will likely be used to gather indirect evidence of concerted practices. Banking data will be most relevant in cases where the authority encounters hiding of assets to evade fines.

A very welcome development is the requirement to state the subject-matter and purpose of an inspection in CC's decision and court authorisation. Until now undertakings frequently had only a faint idea about the substance of suspicions they face. The new requirement will help combat "fishing expeditions".

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## Merger control

The amendments lower the turnover thresholds; filing will mandatory where:

- aggregated turnover of the merging parties during the last financial year in the territory of Latvia is at least 30 million EUR (until now: 35.6 million EUR); and
- individual turnover of at least two of the merging parties during the last financial year in the territory of Latvia is at least 1.5 million EUR (until now: 2.1 million EUR).

The amendments abolish the 40% market share threshold; a welcome development, given the inevitable margin of error in most market share assessments.

However, where the turnover thresholds are not reached, the CC has been granted the right to request a notification after a deal has been closed (the so-called *ex post* notification). This right can be exercised within 12 months after the merger, provided that:

- the parties' combined share of an overlapping market exceeds 40%; and
- there is reasonable suspicion that the concentration may create or strengthen a dominant position or significantly lessen competition.

To avoid the uncertainty of an ex-post request, the parties will have the opportunity to submit a voluntary notification or to obtain a waiver from the CC.

Fines for failure to notify or non-compliance with a prohibition or a conditional clearance will now be up to 3% of net annual turnover (until now: up to 1 400 EUR per day).

The amendments instruct the government to introduce a merger notification filing fee. The government is yet to do so, but previously the CC has stated that the fee for a full and short form notification would be 4 000 EUR and 2 000 EUR respectively. Until now Latvia was one of the few countries without a filing fee.

## Presumption of damages

The amendments introduce a rebuttable presumption that a cartel infringement has caused damages and that "price has been increased by 10%". The purpose is to encourage and facilitate private enforcement. For now, the modalities of damages actions remain unregulated, but further legislation is expected in the coming months, as Directive 2014/104/EU must be transposed by the end of the year.

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### The Estonian Competition Authority accepts supplements to the earlier G4S commitments concerning cash transportation

[Decision No. 5.1-5/16-010, 01.03.2016.](#) [Estonian only]

In December 2014, the Estonian Competition Authority (Authority) terminated the supervisory proceedings against the provider of cash transportation and processing services G4S which were initiated based on the complaint of its competitor Eurex, and approved commitments proposed by G4S. At the time of approval of commitments, G4S and Eurex were the only operators providing the relevant services in Estonia. G4S was by far the largest provider holding a 95% market share. A year after the termination of proceedings, G4S acquired Eurex and submitted an application to supplement the commitments.

The initial commitments set out a pricing matrix for cash transportation services the aim of which was to set out objective criteria for pricing and eliminate discrimination between the clients of G4S. According to the recent supplement to the commitment, 24 of the previous largest customers of Eurex (now clients of G4S) will become subject to the pricing matrix. According to the initial commitment, prices are considered as compliant with the pricing matrix, if the difference between actual price and price according to the matrix is up to 10%. As regards other customers besides the largest 24, Eurex will continue rendering the service (via G4S as a subcontractor of Eurex) under the previous conditions and application of a pricing matrix is not mandatory with regard to these clients.

As a result of the acquisition of Eurex, G4S is now a monopoly on the Estonian market for cash transportation service. As the facts of the case reveal, the competitor that once actively policed activities of G4S has now become a part of the same undertaking. Although the change on the market seems important, the transaction was not subject to merger control.

The Authority controls mergers between parties that have generated individually at least 2 MEUR turnover and jointly 6 MEUR turnover in Estonia. There are specific niche markets, where significant players may have quite small turnovers. Such mergers, as was the case with G4S/ Eurex merger would not be notifiable and the Authority cannot assess and consequently also cannot prohibit such mergers even if merger would lead to 100% market share.

Another learning point from the case is that accepting commitments is becoming a trend for the Authority in handling abuse of dominance cases. Estonian competition enforcement procedures are complex and in this setting commitments may be a preferred option for both dominant companies and the Authority. At the same time other

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market participants may be discontent with commitments of the dominant company, since there is no requirement to market test the commitments and market tests are not common in practice.

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### Lithuanian Competition Council finds infringement in a contract awarded by a utility

[Decision of the Lithuanian Competition Council in case No. 2S-17/2015, 02.12.2015.](#)  
[Lithuanian only]

The Lithuanian Competition Council fined two undertakings for concluding a prohibited vertical agreement in the energy and heating sector. Vilniaus Energija, a major supplier of heating in the Vilnius region, and Bionovus, a producer of biofuel, had entered into an exclusive dealing arrangement for a 5-year term. Since the market shares held by Vilnius Energija and Bionovus exceeded 30 percent on their respective markets and the undertakings did not succeed in invoking efficiency defence, the agreement was deemed to be restrictive of competition. The competition authority imposed fines of 22 million EUR.

Notably, Bionovus was selected as a supplier for Vilniaus Energija through a public tender. Since contracting authorities have only a very limited ability to amend the provisions of the draft contract after tender procedure is launched, the decision of the competition authority serves as a reminder that, first, the tender rules should be devised in a way which prospectively takes into account the possible market position of the successful bidder. Second, the fact that the agreement has been awarded in a public tender procedure, will be no defence for the supplier.

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