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Baltic Competition Law News July/2015

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.

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With kind regards,

COBALT Law offices

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Latvian Parliament further limits exercise of retailers' buying power

Law on Prohibition of Unfair Retail Practices, 21.05.2015.

Latvian Parliament has adopted a law aimed at protecting suppliers vis–à–vis retailers. The law will enter into force on 1 January 2016. It will apply to all food retailers regardless of their size, and to non–food retailers enjoying "appreciable influence in the sale of non–food goods".

The law prohibits 18 practices, such as imposition of fees for processing of agreements, most favoured customer clauses, marketing payments, slotting fees, and unduly long payment periods. Disputes are likely as to whether the list of the 18 practices is exhaustive. Legislative history suggests that this may have been the intention, yet the text seems to outlaw unlisted practices as well, if they are "incompatible with fair conduct of business" and seek to "transfer retailer's risk to a supplier".

Enforcement will be entrusted to the Latvian competition authority, which will open investigations ex officio. The opinion of the suppliers concerned will not be relevant in the assessment of allegedly unfair practices. Private enforcement through courts will also be possible under the new law.

Fines for infringement will be up to 0.2% of annual net turnover. In addition, failure to comply with an infringement decision could result in a daily fine of 2% of average daily net turnover.

The new law is silent on the matter of its applicability to contractual relationships established before 1 January 2016. The better view is that such retroactive effect would not be possible in the absence of an explicit provision to the contrary, yet, in practical terms, it is highly likely that the competition authority will attempt to argue in favour of retroactive effect. The issue will be for the courts to resolve.

This regime builds on and replaces the current prohibition to abuse "dominant position in retail", the concept which exists in Latvian law since 2008 and implies some market power, albeit less than required for the "usual" sort of dominance. The new law is much broader in terms of addressees and types of outlawed conduct, and provides for much heavier fines.

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Lithuanian competition authority is reviewing merger notification procedure

Draft guidelines for the submission and examination of notification on concentration and of calculation of aggregate turnover, 27.04.2000.

Lithuanian competition authority is in the process of reviewing its merger notification procedure guidelines and the accompanying Standard Form of notification on concentration. The purpose of the review is to update the documents in accordance with Lithuanian and EU legislation as well as current merger examination trends.

The procedure guidelines explain the concept of undertakings concerned and the calculation of turnover. The Standard Form specifies the information that must be provided by the notifying parties when submitting a merger notification to the Lithuanian competition authority. The documents were originally adopted in 2000 and subsequently amended in 2005, hence by now they are fairly outdated.

The Lithuanian competition authority carried out a first public consultation on the drafts in January 2015. In light of the replies received, the authority has now fine-tuned the documents and is seeking views from the public on their second draft. Interested parties are invited to submit their views until 18 June 2015.

The drafts submitted for public consultation suggest that the Standard Form will be brought into line with the Form CO used by the European Commission.

The revised merger notification procedure and Standard Form are expected to be adopted by the Lithuanian competition authority later this year.

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Merger of Orkla (Kalev) and NPF (Laima) cleared in Estonia subject to behavioural commitments

Decision No. 5.1–5 / 15-003, 12.02.2015.

Estonian competition authority has cleared the acquisition of various enterprises of Nordic Partners Food Limited (NPF) by Orkla ASA. Both merging parties are suppliers of branded food products in the Baltics and enjoy high market shares. The Estonian authority took this opportunity to prove that it is moving toward a more substantive assessment of mergers and is ready to clear mergers between parties with high market shares.

Orkla owns the largest Estonian chocolate confectionery producer Kalev, and one of the target companies Laima is the largest sweets producer in Latvia. The most significant competition concerns related to the market for wholesale of chocolate confectionery products in Estonia.

The Estonian authority considered that there are four relevant submarkets in the market for wholesale of chocolate confectionery products, namely (a) wholesale of chocolate bars, (b) chocolate tablets, (c) small bites, and (d) gift boxes. The merging parties' joint market share exceeded 50% with respect to chocolate tablets and small bites, and was 4050% in the market for gift boxes. The authority found that Kalev was the market leader in these segments and that the acquisition of Laima would further strengthen its position. Even though the authority acknowledged the possible restraining impact of potential competition, strong existing competitors and the relatively strong bargaining position of large retail chains, it was still concerned that the merger would increase Kalev's opportunity and motivation to raise prices.

On the upside, the Estonian authority was persuaded that the merger would result in significant efficiencies which counterbalanced the harm to competition to some extent.

To further mitigate the competition concerns Orkla undertook not to increase the prices of chocolate tablets, chocolate sweets and chocolate gift boxes in Estonia until 31 December 2016, unless the price increase is necessary due to the increase of input prices (prices of e.g. cocoa products, sugar, milk). It also agreed to report periodically to the Estonian authority uncertain operational aspects

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