RAIDLA LEJINS & NORCOUS

COMPETITION LAW NEWS APRIL, 2012

Dear reader,

In this Latvian competition law newsletter prepared by EU & Competition practice group of law office RAIDLA LEJINS & NORCOUS 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.

With kind regards,

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Supreme Court Judgment No SKA–31 of 17 February 2012 (Informacijas Tehnologiju Fonds) about the effect of admission of guilt by one cartelist on other cartelists

tiesas.lv [LAT only]

In 2007, the Competition Council fined four undertakings for bid rigging in a procurement of consultation services to recipients of EU structural funds. A fine of 6 232 LVL [approx. 8 870 EUR] was imposed on a certain BSM Konsultanti SIA. Three of the four alleged bid riggers appealed against the Competition Council's decision, yet BSM Konsultanti and the authority settled before the first instance court hearing: BSM Konsultanti conceded guilt and undertook to withdraw their appeal, and in return the Competition Council revoked the fine entirely.

Administrative Regional Curt, having heard the case at first instance, annulled the decision insofar as it was addressed to an establishment called 'Informacijas Tehnologiju Fonds'. The Regional Court noted, i.a., that the full release from fine robs the confession by BSM Konsultanti of any credibility. The Competition Council appealed to the Supreme Court.

The Supreme Court annulled the first instance judgment and stated as follows: "*In the view of the Senate [of the Supreme Court], the mere fact that the settlement involved a release from fine is not sufficient to conclude that guilt was admitted only on account of pecuniary interest.*"

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DECISIONS OF THE COMPETITION COUNCIL

Decision No E02–13 of 24 February 2012 (NM Ipasumi & Info Buve) about deletion of electronic information before dawn raid and absence of effect on liability

Latvijas Vestnesis, 16.03.2012., No. 44 (4647) [LAT only]
kp.gov.lv [LAT only]

The Competition Council has chosen not to increase a fine imposed in a case where hiding of electronic information seems very probable, but its content has not been recovered.

In the wake of a municipal procurement for building renovation services, the Competition Council has uncovered already the second case of bid rigging. During investigation, the authority raided both undertakings involved in this particular episode, but two weeks

elapsed between the visits. At the premises of the second undertaking the officials discovered that "*all information has been erased from the computers*". A manager of the respective company explained that "a *few days ago […] a computer virus was found*" and treated, but could not clarify why only documents had been erased and no system files reinstalled.

Probably because plenty of other evidence had been obtained, the Competition Council did not attempt to recover the deleted information. In the section of the decision dealing with calculation of fine, the authority simply noted that no aggravating circumstances had been established, although, according to the law, interference with investigation and hiding of evidence are exactly that.

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Decision No E02–3 of 13 January 2012 (Atslegmeistaru braliba) to fine an association rather that its members

Latvijas Vestnesis, 08.02.2012., No. 22 (4625) [LAT only]
kp.gov.lv [LAT only]

The Competition Council has briefly explained in what circumstances an association of undertakings must be fined, rather than the undertakings themselves.

During an inquiry into the market of locksmiths' services, the Competition Council discovered that Latvijas Atslegmeistaru braliba (Latvian Locksmiths' guild) prepares and distributes documents labelled "LAB recommended prices". A fine of 500 LVL [approx. 710 EUR] was imposed on the guild.

Where an infringement of competition law has been committed by an association of undertakings, a Cabinet of Ministers Regulation allows the fine to be imposed on the association or on its members. In the present case, the Competition Council explained that the fine must be imposed on the association, because "*the prohibited agreement was implemented by LAB officials, as authorised by LAB members, drafting documents called "LAB recommended prices 2007" and "LAB recommended prices 2009"*".

It follows that in the opposite case – i.e. if initiative in the infringement were attributable to the members of the association and the latter had only an administrative role – a fine would be imposed on the members themselves.

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Decision No 2 of 6 January 2012 (Hausmaster / Rigas siltums) about Competition Council's competence to 'decide' civil law disputes

Latvijas Vestnesis, 20.01.2012., No. 12 (4615) [LAT only]
kp.gov.lv [LAT only]

The Competition Council has adopted a decision which demonstrates that at least occasionally the authority is ready to take sides in civil law disputes, and to issue a mere warning instead of finding an infringement.

Hausmaster SIA, a residential property manager, complained at the Competition Council about unfair terms and conditions imposed by Rigas siltums AS, the centralised heating monopolist, in negotiations of a heat supply agreement for a certain building. The requests of Rigas siltums included the following: filing of a heat supply agreement termination notice by the outgoing property manager; filing of a technical transfer agreement concluded with the previous manager; payment of the accrued debt; filing of evidence that the flat owners have validly resolved to terminate the previous management agreement in accordance with the procedure prescribed therein. Hausmaster alleged an abuse of dominant position.

In its analysis of the terms and conditions imposed by Rigas siltums, the Competition Council arrived at rather incoherent conclusions. As regards the requirement of a termination notice being filed, the authority stated that the previous heat supply agreement does not have to be terminated, because the respective rights and obligations can be assumed by the owners of the property and by the new manager. It added that the requirement of termination "*is formal and can hardly be achieved in case the previous manager does not voluntarily terminate its legal relations with [Rigas siltums] and tries to impede the new manager's […] attempts to ensure the supply of heat […]*".

Conversely, as regards the requirement of a technical transfer agreement being filed, the Competition Council stated that such an agreement is an essential element of transfer of responsibilities from the outgoing property manager to the incoming one and that therefore

the requirement was not unfair. Here the authority did not apply the line of reasoning according to which, firstly, the management rights and obligations can simply be assumed by the owners and the new manager, and, secondly, the ousted manager could put obstacles in the path of its competitor.

In what amounts to a 'decision' on the merits of an on–going civil law dispute, the Competition Council also concluded that that Rigas siltums may not insist on receiving evidence that the previous management agreement had been terminated by a resolution of a meeting of the owners, because such procedure, in the view of the authority, was not required.

Having explained the failings of the approach adopted by Rigas siltums, the Competition Council decided that there has not been an infringement, declined to launch a full investigation and chose simply to 'warn' the heat supplier: "*[I]f, following the entry into force of this decision, RS continues […] to insist on compliance with the terms and conditions […] of the agreement concluded between the owners of the flats and the previous property manager, the conduct of RS may be treated as an abuse of dominant position.*"

Apparently, and contrary to authority's previous attempts to distance itself from civil law disputes, it seems that sometimes a complaint to the Competition Council may help resolve the differences.

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