COMPETITION LAW NEWS

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.

You may follow us on Twitter @RLN_Latvia to read these and other office news.

With kind regards,

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In this issue:

Case law

- Supreme Court endorses “state capitalism”
- Regional Administrative Court allows Competition Council to miss the statutory decision deadline

Soft law

- Competition Council publishes guidelines on oral hearings

Case law

Supreme Court endorses “state capitalism”

Judgment of 29.12.2014. in case SKA–79 (L&T) **[LAT only]**

The Supreme Court has overruled earlier case law concerning the rights of the state and municipalities to operate businesses.

The essence of the dispute is simple: the municipalities of Limbazi and Cesis established a waste management company and procured its services without tendering. L&T, a private waste management company, now asks the court to order the municipalities to organise a public procurement procedure.

Previously the Supreme Court would have analysed whether the market is able to provide the services required by the public entity. In the present case the Court admits a change of approach and somewhat ramblingly tries to explain that *“a public entity enjoys a wide discretion that is based on publicly defined aims and considerations which depend on the extent to which it implements a socially oriented policy. Therefore control over such choices is not subject to legal criteria and, accordingly, to judicial influence”*.

The practical effect of the judgment is yet to emerge; presumably it will refocus disputes to what is and what is not a “policy choice”. One clear message which the administrative law department of the Supreme Court sends is that its distrust for markets is growing.

Top

Regional Administrative Court allows Competition Council to miss the statutory decision deadline

Judgment of 06.01.2015. in case A43016313 (Austrumu energoceltnieks) **[LAT only]**

The Regional Administrative Court has ruled that Competition Council’s failure to adopt decisions within the statutory deadline is an insignificant procedural defect.

The Competition Act provides that *“the Competition Council shall adopt a decision within six months from the date a case is opened”*, but, if reasonably necessary, *“the deadline for the adoption of a decision may be extended to a maximum of two years from the date the case is opened”*.

On 17 June 2013 the Competition Council fined 26 power line construction companies for bid-rigging in more than 300 procurement procedures. The case had been opened on 21 April 2011, i.e. 2 years and almost 2 months before the adoption of the decision. Upon appeal one of the fined companies argued before the Court that the decision must be annulled because of the missed deadline. The Court disagreed:

> *“Having regard to the fact that, before issuing a decision which is adverse to the interests of the addressee, the [Competition] Council was obliged to obtain the opinions of the parties concerned, and that there were many such parties, thus delays occurred as the parties concerned reviewed the case-file and submitted their observations and the authority formulated its opinion in the decision, the Regional [Administrative] Court considers that in the present case the failure to comply with the deadline is not a significant procedural defect and that it did not lead to the adoption of an illegal decision.”*

This approach is not unexpected. Previously other authorities had benefited from similar rulings. Yet it is doubtful whether in the long run it is indeed in Competition Council’s own interest to rely on case law that is at least problematic as regards compliance with fundamental rights.

Top

Soft law

Competition Council publishes guidelines on oral hearings

Guidelines of 03.2015. **[LAT only]**

The Competition Council has published the long-awaited guidelines on oral hearings in infringement investigations. The Latvian Competition Act does not require to hold oral hearings and so far only informal meetings with the staff members and the members of the Competition Council were held upon request

of an involved party or at the initiative of the Council. In view of this informal practice expanding, the Council has decided to take an initiative and formalize procedure.

According to the guidelines, oral hearings are organised i.a. because the Competition Council is a *“quasi–court [and] in a way acts as a first instance court”*. Apparently, from now on the Competition Council will offer to hold an oral hearing in all cases in which the investigated undertaking has been served with a statement of objections.

As the hearing procedure at the Competition Council becomes increasingly formalised it can be expected that in appeal proceedings the courts will be even more critical of arguments which the fined undertaking has not fully raised with the authority prior to the adoption of the decision.

Top