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International Information for International Business

VOLUME 14, NUMBER 11 >>> NOVEMBER 2014

LATVIA

Competition Council Penalizes Company Over Access to Workers' E-mail in Inquiry

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The Competition Council has imposed a penalty on Sanitex SIA, a large distributor of consumer goods, in the amount of 3,000 euros (U.S.\$3,760) over its refusal to grant access to the e-mail correspondence of certain employees related to cooperation with retailers.

The events at issue took place during a visit by Competition Council staff to the company for the purposes of a laundry detergent sector inquiry.

Sanitex considered that, during a sector inquiry, the Competition Council has no right to request access to e-mail correspondence in general. Instead, the authority must identify specific documents which it is seeking to inspect. According to Sanitex, correspondence in general could be accessed only for the purposes of investigating an alleged infringement.

The relevant statutory rule provides that the authority has a right to approach any undertaking and "demand documents (including documents in electronic format and containing commercial secrets), get acquainted with those documents on the spot and receive those documents or copies of those documents certified in a manner prescribed by law".

According to the Competition Council's decision, Competition Council staff were willing to skim-read the correspondence and select individual items for further examination. Sanitex maintained that this sort of activ-

ity is allowed only on the basis of a court warrant and in the presence of the police. The officials did not carry such a warrant, but instead acted on the basis of a decision of the authority only. Sanitex also pointed out that the information was not stored in such a way as to allow filtered retrieval, and thus Sanitex would have risked revealing to the authority proprietary information of its partners and private information of its employees.

Sanitex's reasoning is based on principles rather than black-letter law. The provision which describes the Competition Council's powers of access to documents is applicable to market inquiries and infringement investigations alike.

Outlook

Sanitex has appealed the Competition Council's decision, but it seems unlikely that the court will adopt a restrictive view of the Competition Council's powers.

It also remains to be seen whether and how intensely the court will scrutinize Sanitex's assertion that it would have been impossible to separate e-mails related to detergents from private and unrelated correspondence.

Yet, whatever the outcome, judicial scrutiny of the Competition Council's exercise of its inquisitorial powers is overdue, not least because the authority itself would safeguard its legitimacy by maintaining the distinction between sector inquiries and infringement investigations.

The text of the Competition Council's decision of April 23, 2014, in case No. A/14/03.01./1 [Sanitex] is available, in Latvian, at <http://kp.gov.lv/files/pdf/ugqF09UYKY.pdf>.

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