Kluwer Competition Law Blog

Latvia: Recent developments in competition regulation and enforcement

Ieva Moroza (PricewaterhouseCoopers) · Tuesday, April 7th, 2020

1. Brief overview of the existing legislation

The current Competition law[1] in Latvia has been in force since 2002 and is the primary legislation of competition in Latvia. It covers all main infringement types, as well as rules on competition neutrality for publicly owned undertakings and restrictions on unfair competition. Its predecessors were Competition law (1997) and before that law "On competition and the restriction of monopoly activity" (1991). The Competition law has been amended a couple of times, most recently in 2019.

In addition to the Competition law, secondary legislation (Regulations of the Cabinet of Ministers) provides a framework for more detailed regulation on various procedural issues and conditions of exemption from rules on prohibited agreements.

Competition law and the secondary legislations are analogous to the Treaty on the Functioning of the European Union Articles 101 and 102.

2. Competition authority

The main competition authority is the Competition council of the Republic of Latvia (the "**CC**") *(Konkurences padome)*. The CC consists of two members and the chairperson. The CC is established by the Cabinet of Ministers and is directly subordinated to the Ministry of Economy, however, in decision making the CC is independent. Day to day work of the CC is ensured by the Executive Directorate which has five departments.

Most recent news regarding the CC is that its long-term chairwoman Skaidr?te ?brama has decided to resign from the CC. She has been the chairwoman of the CC since June 2012. In April 2020 she will resign as the chairwoman of the CC and a new chairperson will be appointed in the following months. This change in the CC will undoubtedly raise questions regarding the CC's possible shift in priorities and aims, which so far have produced an impressive track record of increasing level of imposed fines[2].

3. Recent amendments to Competition law

In recent years, the CC has been paying close attention and continues to monitor the involvement of public administrative bodies – the state and local governments – and their participation in companies. The most recent amendments to the Competition law[3] are primarily aimed to ensure that the public authorities (both the state and local government) and their undertakings abide by the principles of competitive neutrality.

The amendments were approved by the parliament (*Saeima*) in 2019, and they secured the principle of competitive neutrality within the Competition law. Before the amendments, besides the applicability of general competition law provisions, the CC merely had consultation powers. But given that competition distortion can manifest in several ways and not only by the respective undertaking but also its shareholder – public institution, the CC called for amendments to the Competition law.

With the amendments now in force, the Competition law prohibits public administrative bodies from discriminating undertakings, creating an advantage for their own undertakings and implementing activities that force private undertakings to leave the market. Furthermore, if the CC identifies a possible violation it will first initiate negotiations with the relevant state institution, local government, or an undertaking owned by it. In case of unsuccessful negotiations, the CC may impose disciplinary sanctions on capital companies: a fine of up to 3% of the net turnover of the previous year.

In addition to the amendments to the Competition law, the CC as one of its priorities in 2020 has set out to continue to monitor the public institution and their undertaking activities in the market.

4. Anticompetitive Agreements

The prohibition of anticompetitive agreements is regulated in Article 11 of the Competition law and must be interpreted in line with Article 101 of the Treaty on the Functioning of the European Union. Article 11 states that all anticompetitive agreements are deemed void as of the date of their conclusion and gives a non-exhaustive list of types of agreements which are considered as anticompetitive. The prohibition applies to all types of agreements.

According to the Competition law, for a prohibited vertical agreement between undertakings that are not competitors, the CC is entitled to impose a fine of up to 5% of the net turnover of each undertaking in the latest financial year. Whereas members of a cartel, i.e. a prohibited agreement between competitors, may each be subject to a fine of up to 10% of the net turnover of the undertaking in the latest financial year.[4] The procedure for determining the exact amount of fines for the competition infringements is regulated by a delegated act, which calculates base amount based on total net turnover, rather than revenue from relevant sales.

Many of the prohibited agreements are related to bid-rigging in public procurements. Bid-rigging cases as fairly similar, and mostly are carried out when the tenderer, which has been agreed as the procurement winner (the result of prohibited agreement), sends to other tenderers already prepared cost estimates or indications on what prices they should propose or send as their own cost estimate in the tender. In recent years there have been several notable cases regarding prohibited agreements

in connection with participation in public procurement as well as prohibited agreements on prices or agreements of sales and the sale prices. One of which generated widely cited CJEU's rulings in VM Remonts case[5]. The case arose from the decision taken by the CC regarding three undertakings engaging in a bid-rigging concerted practice.

In 2017, one of the most notable cases of the CC concerned a prohibited agreement between several construction material production and supplier companies – SIA Knauf and SIA Norgips, and five biggest DIY store networks SIA DEPO DIY, AS Kesko Senukai Latvia, SIA Tirdzniec?bas nams "Kurši" and SIA Kr?za. In this case the CC established vertical and horizontal prohibited agreements. The prohibited vertical agreement was initiated by the construction material producer and supplier – SIA Knauf and SIA Norgips which are one of the biggest construction material producers in Europe and worldwide. Its aim was to ensure that the final price of the product in question to consumers is not lower than the purchase price, i.e. is not lower than the prices at which retailers bought the product from the producer. In its decision the CC concluded that the infringement involved not only a prohibited vertical agreement, but the communication between the five biggest DIY goods retailers in Latvia was determined as a horizontal agreement that was initiated and coordinated by the production and supplier companies. During the prohibited horizontal agreement, the retailers assumingly had agreed to maintain certain prices and apply flat discounts, which was reinforced by control measures. In its decision the CC presented multiple years' worth of correspondence between the parties of the agreement. Together the DIY companies were fined EUR 5,6 million. The construction material producers went into settlement with CC and agreed to pay fine EUR 1,6 million. In 2020 the appeal procedures were still ongoing in respect to some of the fined undertakings, in April 2020 the court of appeals upheld the decision of CC regarding one of the fined undertakings.

One of the loudest cases still under investigation by the CC is the so-called "Builders' Cartel" case. According to publicly available information, the CC is investigating a possible cartel of the largest construction companies in Latvia. Currently it is not yet clear which companies exactly are directly involved and how the investigation is progressing, nevertheless the CC as one of its 2020 priorities has set to continue its investigation into the "Builders' Cartel" case.

5. Abuse of dominant position

The prohibition of abuse of dominant position is regulated in Article 13 of the Competition law. For abuse of a dominant position, the undertaking can be fined up to 5% of the net turnover of an undertaking for the previous financial year. The fine may be increased up to 10%, if the undertaking fails to comply with the decision of the CC.

In recent years there haven't been many cases of abuse of dominant position. Nevertheless, the CC does work to monitor several markets each year where issues of fair competition have been identified. Paying particular attention to those markets where there is a stronger dominance of some players and markets in which there is a monopoly.

Regarding cases of abuse of dominant positions, the CJEU's ruling in the AKKA/LAA case[6] relating to the issue of excessive pricing, must be mentioned. The case emanated from the CC's decision to fine the Copyright and Communication Consulting Agency/Latvian Authors Association (AKKA/LAA) – a collecting society owning the exclusive right to license music to

retailers and service providers to play at their venues, for charging excessive fees for the right to play such music.

In cases where the CC identifies possible non-compliance with the Competition law in the activities of dominant undertakings, but a large part of the market is not affected, the CC may conduct a negotiation procedure with the particular market undertaking. In 2017, the CC conducted six negotiations and in 2018 – three negotiation procedures. The relevant markets that have been discussed in the negotiation procedures differ, for example, postal services, heat supply, lease of premises at the airport. These negotiations are not formalized in the regulation and do not impose any binding measures on anyone.

In the last two years, the CC has adopted two decisions regarding abuse of dominant position. Both cases earned a particularly wide resonance as both are related to waste management. It should be mentioned that the waste management market in Latvia has long been one of the main issues regarding fair competition. The CC has been involved in the regulation and supervision of the waste management sector since 2007, with the aim of opening the waste management market and promoting free and fair competition therein. In recent years the CC has carried out investigations regarding waste management in several local municipalities.

In 2019 the CC initiated a sector inquiry which led to opening a case regarding waste management in Riga. For now, the CC has imposed interim measures suspending concession agreements concluded between Riga municipality and two waste management undertakings – SIA Getli?i EKO and AS T?r?ga. The CC concluded that Riga Municipality and SIA Getli?i EKO are dominant in the market for collection and transportation of unsorted and separated waste in the administrative area of Riga, furthermore SIA Getli?i EKO is dominant in the market for waste disposal in Riga and Riga region and both abused their dominant position in the market. Important to note that this is a notable case in the CC's practice, because for the first time the CC took a decision on interim measures. In this case the CC tested its limits since, at the time of the decision the Competition law did not include the CC's rights to impose interim measures. To make this decision the CC relied on the general procedural provisions that had not been used before in regard to competition cases. After the CC imposed interim measures in this case the Competition law was amended giving the CC the right to take a decision on interim measures.

Another case in 2018 regarding waste management was similar and yet again brought discussions regarding activities of the undertakings that are owned by local municipalities. The chairwoman of the CC emphasized: *"This is another testimony to what happens when there is no competition in the market and the exclusive rights granted to the municipal undertaking are not properly controlled. In this case, the municipal-owned waste management giant acted solely in its own interest and unimpeded by competitive pressure, which is clearly incompatible with honest and responsible behavior."*[7] Which is one of the reasons for the above-mentioned amendments to the Competition law in 2019.

6. Merger control

The CC as the main competition authority reviews and gives its approval to several mergers each year. Most of the notified merger cases in Latvia are cleared at Phase 1 of an investigation. However, if the merger notification to the CC is submitted after completion of the merger, the CC

has not hesitated to impose fines.

As the CC pointed out, the merger cases continue to increase in the last years. Evaluating the previous four years, the number of merger reports submitted in 2018-2019 is 63% higher than in 2016-2017.

And rarely, the CC prohibits the merger. Most merger cases in recent years did not need an in-depth review process. Over the last four years, 15 horizontal mergers have been subject to in-depth evaluation. The markets in which the CC carried out an in-depth review are various, such as fuel, telecommunications and digital services, insurance, health, agriculture etc.

Cases in which the CC prohibited the reported merger in recent years are not many, for example in 2019 – 2 out of 18, 2018 – 1 out of 21, in 2017 – 1 out of 13. In 2020 the CC has already approved four merger cases.

Two of the prohibited merger cases were related to the largest retailers in Latvia. In 2018, the CC decided to prohibit retailer SIA MAXIMA LATVIJA from acquiring rights to use (rent) commercial premises in Riga where its competitor was operating at the time. The CC came to the conclusion that, if the merger was approved, only two retailers would be operating in the specific market and in the specific area, and those two retailers are the largest retailers in Latvia. The CC concluded that, if the merger is approved there will be a reduction in the number of market players from three to two in the relevant market and a strengthening of the position of major players in the retail market for consumer goods, with a significant reduction in competition in the relevant market.[8]

The CC came to a similar conclusion in 2017, in a case where one of the largest retailers in Latvia SIA RIMI LATVIJA was prohibited to rent retail space in one of the shopping centers. The CC concluded that by approving the merger, the retailer would have increased its market power in the multifunctional malls and in the relevant market identified in the case. As a result, the merger would have significantly reduced competition in the relevant retail market for consumer goods identified in the case.[9] This is a notable case in the CC's practice since for the first time in CC's practice it used isochrones to determine the market.

The decisions go hand in hand with the increased monitoring of retailer activities and the CC's focus on monitoring retailer market power. The CC pays particular attention to the operations of large retailers in the market. Furthermore, in 2016 a special law came into force aimed specifically at the retailers – Unfair Retail Trade Practices Prohibition Law[10].

7. Conclusions

Compared to other countries, the Latvian competition law's history is very rich in quite a short period of operation, as the competition law practice in Latvia has been developing for little more than the last 25 years. The practice of the CC has evolved and moved on in parallel with the practice of the European Union. The CC is one of the institutions that most actively carries out their duty, carrying out market evaluations, investigations and does not hesitate to impose penalties on undertakings that violate the Competition law. The markets that the CC has investigated in the recent years are diverse, from waste management to telecommunications and pharmaceuticals and

agriculture. Like in other countries, in Latvia, often state or local government owned undertakings are a threat to fair competition. The activities of these undertakings can often make it difficult for private undertakings to enter the market, so the CC's long-standing goal is to continue to monitor and limit their activities in the market.

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[1] Competition law of the Republic of Latvia. Latvijas V?stnesis, 151, 23.10.2001. https://likumi.lv/ta/id/54890

[2] PwC Legal Latvia research on historical fines imposed in the Latvian jurisdiction – PwC Competition watch 2019, available here: https://www.pwc.com/lv/lv/about/Projects/Competition-watch-2019/PwC_Competition_watch_2019_ENG.pdf

[3] The most recent amendments to the Competition law came into force in April 2019 and January 2020.

[4] For more detail visit: https://www.kp.gov.lv/en/darbibas-virzieni/aizliegtas-vienosanas

[5] Case C-542/14, SIA 'VM Remonts (formerly SIA 'DIV un KO') and Others v Konkurences padome.

[6] Case C?177/16, Autorties?bu un komunic?šan?s konsult?ciju a?ent?ra/Latvijas Autoru apvien?ba v Konkurences padome.

[7] "The CC imposes a fine on SIA "ZAAO" for abuse of market power" https://www.kp.gov.lv/posts/kp-soda-sia-zaao-par-tirgus-varas-launpratigu-izmantosanu-855

[8] The decision of the CC of Competition No.29 of 17th December 2018.

[9] The decision of the CC of Competition No.2 of 12th January 2017.

[10] Unfair Retail Trade Practices Prohibition Law. Latvijas V?stnesis, 107, 03.06.2015. https://likumi.lv/ta/id/274415

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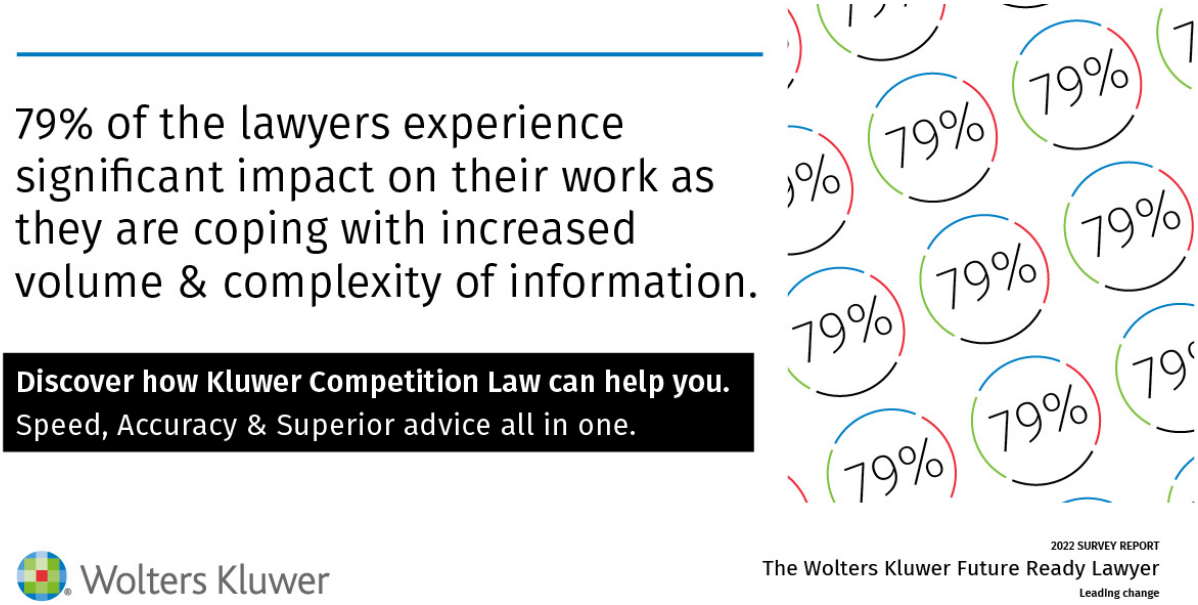

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