Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Estonia

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In recent years, one could have argued that merger control dominated Estonia's competition enforcement landscape, with high-profile cases setting precedents. However, 2024 painted a different picture. Merger control did not generate the same level of excitement or controversy as in previous years. Instead, the year will likely be remembered for heated debates surrounding legislative proposals, market studies and finalization of some long running supervisory cases.

The most defining development throughout 2024 was undoubtedly the ongoing debate surrounding the implementation of the ECN+ Directive (please see a more detailed overview of the topic here). At the same time, the Estonian Competition Authority (ECA) adopted several noteworthy decisions, most notably the Pindi Kinnisvara non-poach case, the kv.ee and auto24.ee excessive pricing cases and investigations into Lindström's practices for terminating agreement in the textiles rental services. Last but not least, 2024 will go down as the year of market studies.

Legislative changes

On-going Transposition of the ECN+ Directive – A Regulatory Groundhog Day?

As is widely known, the ECN+ Directive, was supposed to be transposed into national laws by early 2021. However, the reality has been far more complex. In fact, only five Member States managed to meet the deadline, highlighting the significant challenges associated with aligning national frameworks with the directive's ambitious objectives. While many Member States faced difficulties, Estonia stands still out—it remains the last EU member state yet to complete the transposition process.

For Estonia, a country known for its flat geography, the metaphorical peak of ECN+ Directive transposition remains stubbornly out of reach. Despite repeated discussions, drafts, and political debates, the finalization of the required national provisions has yet to materialize. The question now is: will 2025 finally mark the end of this prolonged legislative journey, or will we start 2026 in the same way as several past years with no end in sight for this topic?

For readers seeking a more detailed analysis of this ongoing debate, a comprehensive blog post on the subject is available here. For those with less time or interest, the crux of the discussion revolves around a fundamental question: What should be the legal framework for future competition

enforcement in Estonia? Namely, whether competition law infringements should be handled in misdemeanour proceedings (with changes to meet the requirements of the ECN+ Directive) or within a special-purpose built administrative fining system.

While the intricacies of competition enforcement are often a subject reserved for legal professionals and scholars—particularly the readership of the Kluwer Competition Law Blog—2024 marked a year where competition law enforcement became a widely debated topic in mainstream media, moving beyond specialist circles. The debate captured the attention of not only legal experts but also politicians, policymakers, journalists, and the broader public. One can only hope that such new-found interest in competition enforcement will continue in 2025.

Direct Application of EU Block Exemptions to Purely National Cases

Less limelight was garnered by an amendment at the end of 2024 to the Estonian Competition Act enabling the direct application of EU block exemption regulations (BERs) also to purely national cases.

Until now, the EU BERs and Estonia's national block exemptions coexisted, with the latter designed to mirror closely the content of their EU counterparts. In theory, this dual approach aimed to provide consistency, ensuring that agreements benefiting from an EU exemption would also benefit from the safe harbour treatment under Estonian law. However, in practice, several challenges made this system less effective.

First, while national block exemptions were drafted to closely resemble the EU BERs, they were not always perfectly synchronized. Variations in wording created the risk of different legal outcomes, leading to uncertainty for businesses and enforcement authorities alike. Second, it is not always straightforward to determine whether Article 101 TFEU applies (triggering EU competition law) or whether only national competition law is relevant. This amplifies the uncertainty arising from not always uniform regulations. Last, EU BERs are subject to fixed expiration periods. The national exemptions were not always drafted and enacted in time, creating temporary regulatory gaps.

Under the newly amended law the Estonian government now has the authority to designate which EU BERs will have direct effect also under national law. Hopefully this change leads to lower administrative burdens and increased legal certainty.

Other debates

Under the current legislative climate, other discussions (e.g. on new competition tool or call-in powers) are bound to remain secondary. While at times such discussions can surface, it is hard to see such debates gaining further ground until ECN+ Directive is fully transposed and its impact assessed.

Abuse of dominance

Given the institutional set-up of Estonia's competition enforcement, the ECA has in general focused more on abuse of dominance cases. 2024 was no exception, with several notable cases. As usual, only short comments on a few selected cases are given below.

Kv.ee and auto24.ee – Excessive Pricing Investigations in Digital Sector

The year saw the closure of prolonged investigations into activities of AllePal, operator of several online classifieds portals.

The cases date back to 2019, when the ECA initiated supervisory proceedings into the pricing practices of kv.ee and city24.ee, both part of the same group and large players in the real estate classifieds market. The investigations expanded in 2022 with the opening of proceedings *vis a vis* pricing of auto24.ee, Estonia's leading automotive classifieds portal. The investigations focused on whether the business-to-business (B2B) pricing—specifically, fees charged to real estate agents and car dealerships respectively—constituted excessive pricing.

On April 18, 2024, the ECA closed both investigations, applying a consistent analytical framework across the real estate and automotive classifieds markets.

In both cases, the ECA found kv.ee/city24.ee and auto24.ee to be dominant in their respective markets. This conclusion rested on narrow market definitions, arguing definitions based on specialized online classifieds platforms while excluding broader alternatives, such as social media platforms. Notably excluded from relevant markets were Facebook and its Marketplace service.

The exclusion of Facebook Marketplace from relevant markets raises naturally questions on if said market definitions remain relevant in the future, particularly in the light of the EU Commission's decision on Facebook Marketplace.

Arguably more interesting parts of both cases were the analysis of excessive pricing itself. Notably, the authority in effect applied a widely recognized United Brands framework, re-applying an established test in a new economy context. Said tried and tested approach requires an analysis on whether a price is excessive by comparing it to the product's production costs, while also considering whether the price bears reasonable relation to the product's economic value.

In these cases, the ECA focused on quantifying the value created by the platforms. The analysis considered key factors such as visitor traffic and the platforms' role in generating transaction opportunities. While United Brands framework is relatively easy to follow in theory, then its actual application leads to complex real-life questions. Currently it necessitated analysis of user engagement, commission rates, benchmarking key metrics against similar Baltic and European platforms. A task all the more complex due to lack of relevant data. Ultimately, the findings suggested that while the platforms held a dominant position, the fees charged were proportional to the value provided, particularly in terms of market visibility, customer reach, and conversion potential.

Lindström – Abuse of Dominance via Restrictive Conditions on Contract Termination

In 2024 the ECA also concluded investigations into the activities Lindström, a key player in workwear and floormats rental services. Review focused on if Lindström's contract terms

foreclosed competition by imposing unfair obligations on termination of agreements. Notably, the authority raised concerns and argued that the obligation to give a 12-month notice prior to termination of an agreement was excessive and led to possible market foreclosing effects.

As is often the case, the key questions revolved around the market definition. The ECA defined the relevant markets as the market for rental of workwear and the market for rental of floor-mats. In both cases direct purchases of textiles and self-maintenance were excluded, as these were deemed to not impose sufficient competitive pressure. An interesting aspect of the market definition analysis was the application of the Small but Significant and Non-transitory Increase in Price (SSNIP) test in a high-inflation environment. During the investigated period, Estonia experienced unprecedented double-digit inflation, raising doubts about whether a 5–10% price increase (the standard SSNIP threshold) accurately reflected market dynamics. The text of the decision largely slips over the question. Likely due to the fact that the case was settled.

The authority went on to find that Lindström was dominant on such markets due to market shares exceeding the 40% threshold typically used to presume dominance under national law.

The ECA concluded that Lindström's contract terms constituted an abuse of dominance by discouraging customer switching and restricting competition. The long notice period was seen as a barrier to contract termination, reducing customer mobility. Notably, the decision did not assess foreclosure effects in detail, instead adopting an arguably formalistic approach—suggesting that longer termination periods could be seen as *per se* abusive. Again, this may be due to the case being resolved through a settlement, making the presentation of a deeper economic assessment unnecessary.

To resolve the raised competition concerns, Lindström committed to a set of behavioural remedies, primarily reducing the notice period from 12 months to 3 months. Additionally, the company introduced specific carve-outs, allowing for exceptions to termination obligations, particularly in cases where customer-specific solutions had been developed. These commitments led the ECA to conclude the case without further enforcement action.

Anti-competitive agreements

One of the most notable anticompetitive agreements cases in 2024 involved employee no-poach agreements, reflecting growing European competition law interest in labour market restrictions.

Recent EU and regional developments—including the European Commission's Policy Brief, the Joint Nordic Competition Authorities report, and the Lithuanian Competition Authority's guidance paper—have all underscored the focus on competitive risks around labour relations. Specifically in cases where agreements between companies hinder worker mobility and distort labour market competition.

Arguably, Estonia now also entered into this debate, taking a particularly restrictive stance in a case involving Pindi Kinnisvara, a leading real estate agency. The ECA investigated non-compete/ non-poach clauses in Pindi Kinnisvara's contracts with agents, who operated via their own legal entities for taxation reasons. The clauses prohibited former agents (legal entities) and any of their employees from engaging in competing activities for six months after contract termination.

A notable feature of the case is the specific Estonian context—most real estate agents do not have direct employment contracts but instead sign service agreements through their legal entities. To protect its business interests, Pindi Kinnisvara included clauses ensuring that employees of these entities would not work for competitors. In cases where agents (natural persons) would have had direct agreements with Pindi Kinnisvara, services agreements would have bound the natural persons directly. Now instead agreements were concluded with legal entities, with an effect of also binding natural persons in turn. This naturally raised a question on whether no-poach type of restrictions have been agreed upon.

The ECA took the view that Pindi Kinnisvara's agreements constituted non-compete obligations between undertakings, qualifying them as by object restrictions. The wording of the decision suggests a broad prohibition, implying that such clauses may always be unlawful (or allowed under a very narrow sub-set of circumstances). It could be argued that classifying all such agreements as by object restrictions conflicts with recent ECJ case law, which has narrowed the by object classification. The general EU jurisprudence would suggest that restrictions should be assessed in their specific context rather than assumed unlawful *per se* (contrary to what was argued in the Estonian decision). However, labour-related competition restrictions could be argued to remain uncharted territory for EU courts, as no major cases have been litigated at that level.

In addition to the age-old by object/ by effect debate, it is noteworthy that the case did not assess the possible application of the ancillary restraints doctrine or efficiency defences, both of which are explicitly referenced in the above-mentioned European Commission's policy brief. This omission is likely due to the case being resolved through a settlement, eliminating the need for a detailed analysis. However, such omissions sparked broader concerns about the legality of employee-related non-compete and no-poach agreements in Estonia. It remains unclear whether the ECA intended a blanket ban or if certain restrictions could still be justified. Future enforcement practice will likely follow EU-level developments. Hence, the referred case should not be read outside the ongoing debate in the EU.

Merger Control in 2024 – High Volume, Low Excitement

In 2024, the ECA received 44 merger notifications and issued 39 decisions, with five cases still under review by the start of 2025. Additionally, seven cases from 2023 were finalized in 2024. Despite the high number of filings, this was not due to an M&A boom but rather Estonia's low notification thresholds, which require notification when the combined turnover exceeds €6 million and at least two parties individually exceed €2 million.

Only two cases entered Phase II investigations, with one being cleared quickly, likely indicating that Phase II was due to procedural reasons. The other remains ongoing, making it too early to analyse its implications.

While 2024 was uneventful, 2025 could be more dynamic. Primarily due to geopolitical reasons the Baltic region remains unattractive for foreign capital, creating opportunities for strategic buyers, which historically leads to more complex merger control cases.

Rise of Market Studies – The Most Unexpected Development of 2024

In 2024, the ECA conducted an unexpectedly high number of market studies, analysing motor fuel retailing, orthodontic services, effects of pharmacy reform, and organized waste collection. Each study identified notable market deficiencies and proposed recommendations. Notably, only the waste management study resulted in visible regulatory amendments, while the other studies have not led to visible enforcement actions nor policy changes. This raises a key question—will these findings drive meaningful change, or will they remain theoretical exercises without real impact?

This question on practical impact is all the more relevant as it is already clear that 2025 will also bring market studies, with a detailed review of e-chargers for vehicles already completed and an apparent study into the telecommunications sector having been announced.

Due to capacity constraints, only three market studies are examined in some detail.

Fuel retail market analysis – Still Looking for the Gas Station Cartel

Have gasoline stations concluded a cartel? This must be a question that every competition law practitioner has been asked during compliance trainings. This has also been an age old question in Estonian public discussions. One can only speculate if this was the rationale behind the market study as well.

In any case, the study focused on the competition in national fuel retail and wholesale markets. The study found that Estonia's fuel market is small but highly concentrated, with one of the densest gas station networks in Europe. At the same time, price increases seen were largely attributed to external factors, including international fuel prices, excise duties, and the 2022 energy crisis following Russia's invasion of Ukraine.

A key issue identified was the informational asymmetry between consumers and market participants. While fuel companies actively monitor and react to competitors' prices, consumers lack real-time pricing data, as Estonia does not have a centralized fuel price data system. To address this, the ECA has proposed a national real-time pricing platform, which could increase transparency, promote competition, and enable quicker intervention in case of irregularities. Whether this leads to meaningful change remains to be seen. Previous notably as it is questionable if any centralized data-platform would materially alter the transparency of the market. Moreover, it could also be argued that in highly concentrated markets with homogeneous products, increased transparency could actually lead to greater price alignment rather than more competitive pricing.

Although no cartel was discovered (easing responding in future compliance training), the study notably referred to the possibility of collective dominance in the sector. This is particularly notable as collective dominance has recently gained renewed attention at the EU level, notably in the European Commission's draft guidelines on TFEU Article 102 (paragraph 34 *et al*). However, despite the theoretical discussion, actual enforcement based on this approach remains questionable. As is known, then the European Commission has not pursued a collective dominance case in decades, and Estonia has no precedent in this area.

Organized waste collection study

Given the ECA's historical focus on organized waste collection, the market study on the sector was unsurprising. The findings paint a concerning picture of declining competition.

The study highlighted a falling number of bidders in public tenders, reducing local governments' options, increasing the risk of higher prices and lower service quality, and creating entry barriers—particularly during the procurement phase. Among others, key concerns included, below-cost bidding due to pricing pressure, leading to financial instability and discouraging new entrants. Also, strategic underbidding, where companies submit unrealistically low bids only to seek price increases later, reinforcing dominant players' market power was seen. Lastly, it was argued that exclusive service contracts are resulting in ever higher concentration levels and uncompetitive markets.

As part of its study, the ECA issued a set of recommendations to municipalities on running public tenders more competitively. Many municipalities responded positively, with large numbers of them reporting changes in their procurement practices that have already been made or that will be implemented in the near future. Beyond local-level adjustments, the study likely also influenced national policy and could be one of the elements that influenced the Ministry of Climate to incorporate pro-competition measures into a broader waste sector reform. As such, this case stands out as a good example of how such studies can affect market practice at different levels.

Orthodontic services market analysis

Following a public debate between the trade associations for dentists and orthodontists, the ECA carried out a survey on orthodontic services. Said report discussed different structural issues, including supply shortages and long waiting times for orthodontic services. Study argued that despite a doubling of patient demand from 2011 to 2018, the number of orthodontists has remained stagnant, leading to 9–24 month waiting periods and many clinics not accepting new patients.

A key identified constraint was the small number of orthodontic residency admissions in the university which in turn limits the supply of new specialists. The ECA recommended, among others, expanding training programs and reforming the model on provision of services. However, the study raises broader policy questions in the training of specialists and a wider question on funding of higher education in Estonia.

Given that the ECA lacks direct influence over healthcare workforce policies and universities' funding, it is unclear whether it will lead to practical reforms. The findings suggest that structural issues exist in the Estonian healthcare set-up.

Final remarks

In 2024, the main influencing factor of Estonia's competition enforcement was a development that did not occur – transposition of the ECN+ Directive. 2025 will likely bring developments on this end. A second key feature was the focus on market studies, raising the open question of how much these exercises will influence actual enforcement and policy. While individual competition cases in 2024 were noteworthy, their wider relevance remains to be determined. Many enforcement actions were either settled or focused on specific sectors, limiting their precedential value.

2025 could be more dynamic, with ongoing legislative debates nearing completion and this potentially triggering a wider range of new cases where the ECA would seek to use the new powers.

Stay tuned!

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Declaration of conflict of interests:?The authors have acted for parties involved in several of the cases referenced above and have also contributed input to legislative changes discussed in this article.

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