

Unclassified

English - Or. English

21 May 2021

Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Latvia

-- 2020 --

This report is submitted by Latvia to the Competition Committee FOR INFORMATION.

JT03476832

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## *Latvia*

### Foreword by the Chairman

1. The year 2020 has been a year of changes, which has challenged almost every person and authority in every corner of the world. Also, the Competition Council went through strong winds of change last year – not only those brought by COVID-19 pandemic, but also much more local. On 14 September 2020, I was honored to take over the helm of the Competition Council after the long-standing Head of the Authority Skaidrīte Ābrama left her office. Undoubtedly, this year has asked much from every employee of the Competition Council – self-discipline while working remotely from home, motivation not to give up when facing the unknown, and, most important, willingness to develop and adapt constantly, so that every employee could grow as an expert in own area and we could together become a strong, independent and influential authority, the opinion of which is taken into consideration by market participants, public administrative bodies and also policy makers, who hold the required powers to develop such laws and other regulatory enactments of Latvia that promote fair competition in all areas of the national economy.

2. The year 2020 was the first year of implementation of the 3-year (2020-2022) operational strategy of the Competition Council. Starting from this year, we have supplemented the previously defined three key values of the Competition Council – legality, professionalism and independence – with development, which proves that we are ready to work on the growth of the Authority, modernization of supervision methods and focusing on achievement of results. Also, over the course of these three years, we will dedicate our resources to three main directions of operation: 1) identification and elimination of the most significant infringements of the competition law, 2) strengthening of the capacity of the Authority, and 3) education of the public on fair competition.

3. Despite the challenges faced in 2020, it has been a successful year of work and we have achieved considerable results in every direction of operation. As regards elimination of the most significant infringements of the competition law in 2020, I would like to highlight the decision adopted by the authority on the abuse of dominant position by SIA “LDZ CARGO” on the market of railway freight transport and the fine of 5.7 million euros imposed on the company for this infringement. Also, the last year was the first year when the Competition Council was able to use its newly-obtained powers to address competition distortions caused by public administrative bodies. In the first year of supervision, we received approximately 150 different applications on the conduct of public administrative bodies, majority of which were complaints on competition restrictive conditions set by public administrative bodies in procurements. Considering that the powers to address competition distortions caused by public administrative bodies were obtained by the Competition Council only on 1 January 2020, the first year was spent under the sign of “Consult at first” principle, educating and consulting the state, local governments and their capital companies. In addition, the Competition Council also implemented four market inquiries, assessing the activities of public administrative bodies, and the conclusions drawn after these market inquiries serve as a significant tools in further education of public administrative bodies on observing of the principle of competition neutrality.

4. The overall public benefit from the operation of the Competition Council, preventing competition distortions, conducting market inquiries and encouraging changes for promotion of competition on these markets, as well as supervision of implementation

of merger transactions of large companies, constitutes 24.1 million euros in 2020. Whereas fines in the amount of 934,957.36 euros have been paid into the state budget.

5. An efficient penalty policy serves as one of preventive instruments for prevention of competition infringements. At the same time, explanatory, understandable for the customer and convenient communication may serve as a preventive instrument in prevention of infringements, because by timely understanding of the negative consequences of infringements of the Competition Law and benefits of fair and responsible conduct, entrepreneurs and public administrative bodies are interested in acting in compliance with the law or, upon facing infringements of the competition law, they are ready to report them to the Competition Council. Therefore, in 2020, the Competition Council dedicated considerable resources to one of the priorities of the authority – education of the public, strengthening the cooperation with public administration institutions, as well as national and international partners. During the reporting period, the Authority has not only consulted companies and public administrative bodies, but has also organized seminars, webinars, discussions, given recommendations for implementation of fair competition through podcasts and video messages, and also has developed several self-assessment tools, by using of which compliance of own conduct with the principles of fair competition can be assessed. One of these self-assessment tools has been developed for entrepreneurs for mitigation of bid-rigging risks, the second tool is intended for public administrative bodies to facilitate assessment of their participation in a capital company, and the third tool – for procurement organizers, in order to support them in recognizing bid-rigging signs.

6. As regards the third operational priority of the Authority – strengthening of the capacity – significant progress has been achieved in 2020. A long-standing problem of the Authority has been insufficient financing, as a result of which the Authority has systematically fought high employee turnover. At the end of the last year, support from the government was achieved, as it was decided on granting additional financing to the Authority – 853,467 euros in 2021, 879,769 euros in 2022 and 965,197 euros in 2023. These funds will be significant help to strengthen remuneration of employees, create additional jobs, ensure efficient supervision of compliance with the principle of competition neutrality and the new Unfair Retail Trade Practices Prohibition Law, as well as to strengthen the capacity of IT investigation of the Authority. By developing the competences of our employees, as well as the technical and technological capacity of the Authority, we will strengthen the backbone of the Authority in the fight against competition distortions.

## 1. Basic Information

7. The Competition Council of the Republic of Latvia is a direct public administration authority operating under supervision of the Ministry of Economics. The principal area of operation of the Competition Council is implementation of the competition policy, and it is divided into two sub-areas – competition protection and development of the competition culture, where the financial and human resources, as well as cooperation in the international environment have a key role in ensuring these aspects. The independence of the Competition Council during investigation activities and the decision-making process is the main value of the Authority, which is also stipulated in the Competition Law.

8. **The aim** of the Competition Council is to provide possibility to each market participant to conduct business activities under free and fair competition conditions, promoting development of competition in all areas of the national economy for the public benefit.

9. **Tasks of the Competition Council are:**

- Detection of prohibited agreements: undertakings do not engage in cartels or implement any other prohibited agreements.
- Prevention of abuse of dominant position: large and dominating companies do not abuse their market power.
- Merger control: remedy mergers that create concentration on the market and may negatively impact the interests of consumers and businesses.
- Surveillance of public administrative bodies: the conduct of the state and local governments, and their capital companies do not discriminate the private market players.
- Assessment of legislation: legislation, regulations and any other state or local government decisions or actions do not restrict the development of free and fair competition.
- Promotion of competition: competition is promoted on markets, including the regulated ones, where it is limited or non-existent.
- Raising public awareness: society receives comprehensive information about the positive effects of fair competition on the market functionality and social welfare.

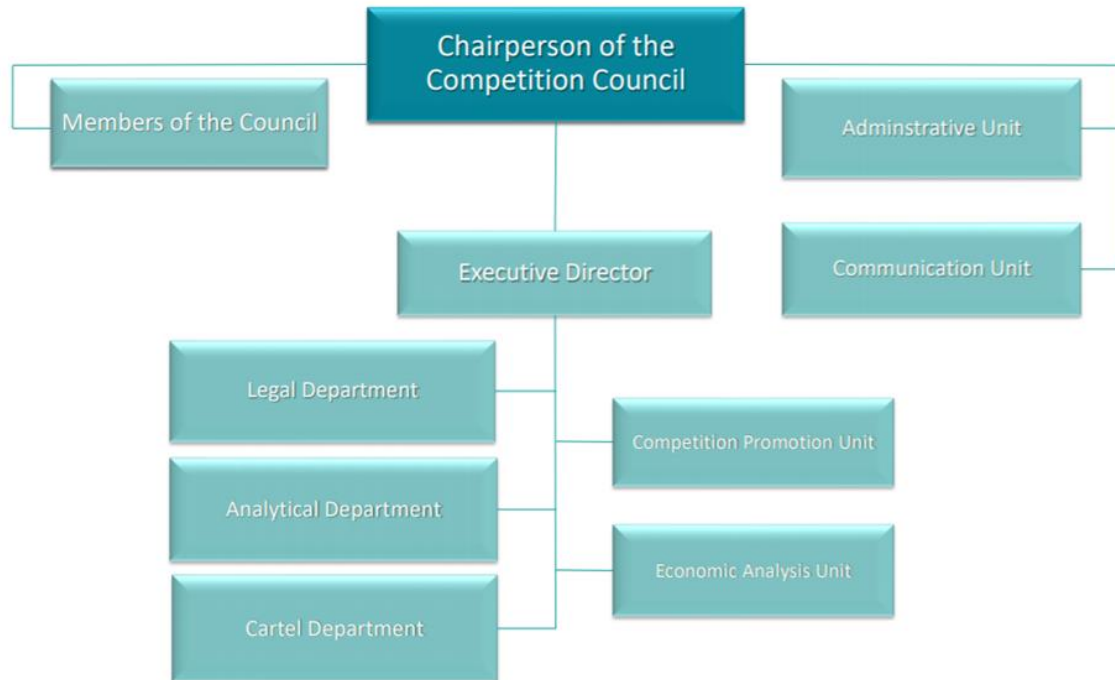
10. Implementation of the competition policy as a key objective of the Competition Council is divided into two categories. The first concerns the protection of market participants and the society against negative effects of market concentration and violations of the Competition law in actions of both undertakings and public administrative bodies. The second concerns development of the competition culture and *ex-ante* prevention of competition violations including reduction of legislative administrative barriers, education of consumers, market participants, public and local government authorities about the nature and application of the Competition Law.

### 1.1. Structure of the Competition Council of Latvia

11. The Decision-Making Body – the Competition Council – consists of a Chairperson, who is also head of the institution, and two Council Members. The Chairperson and Council Members are appointed by the Cabinet of Ministers based on the recommendation by the Minister of Economics. The Chairperson and Council Members have five-year term limit, and may be re-appointed only once. The Chairperson manages activities of structural units subordinated to the Council – Administrative Unit and Communication Unit.

12. The Executive Body is run by the Executive Director who is directly subordinated to the Chairperson. Structural units of the Executive Body include Cartel Department, Analytical Department, Legal Department, Competition Promotion Unit and Economic Analysis Unit. Departments evaluate various applications and investigate violations of the Competition Law, the Unfair Retail Trade Practices Prohibition Law and the Advertising Law, as well as prepare conclusions and draft decisions, perform supervision of competition environment, control execution of legal obligations and represent the Competition Council in courts. The Economic Analysis Unit provides an in-depth economic and econometric analysis during case investigations.

Figure 1. Organizational chart of the Competition Council



## 2. Performance Results in 2020

13. In general, the Competition Council has fulfilled the planned quantitative and qualitative performance results in 2020, which were defined for the Authority in the budget sub-program “Implementation of Competition Policy” based on prior results. Several performance results, incl. in relation to court proceedings, opinions and proposals provided to businesses and public authorities, efficiency in competition advocacy and education of the public, the planned value has been exceeded (see Table 1).

**Table 1. Result-based Performance Indicators of the Competition Council**

| Indicator name/ /Measure name  | Planned value          | Implementation         |
|--|------------------------|------------------------|
| Preventive measures and investigation of alleged infringements, as well as market inquiry have been carried out<br><i>Total number of measures/number of high priority measures</i>  | 25/11                  | 21/11                  |
| incl. investigation of alleged infringements/market inquiry in relation to application of URTPPL has been carried out<br><i>Total number of measures</i>   | 2                      | 4                      |
| incl. research and promotion of competition issues on the markets, where free and fair competition (incl. competition neutrality) is negatively affected by involvement of public administrative bodies<br><i>Total number of measures</i> | 3                      | 3                      |
| incl. identification of obstacles for access to digital services by consumers and market participants, and competition promotion measures, ensuring elimination of these obstacles<br><i>Total number of measures</i>                      | 1                      | 1                      |
| Impact of consequences of planned mergers and agreements of market participants on the competition environment has been assessed<br><i>Number of cases/number of high priority cases</i>   | 16/6                   | 11/2                   |
| In-depth analyses of data (e-evidence) obtained during inspections were carried out<br><i>Number (calculated once per year)</i>  | 8                      | 9                      |
| Representation in legal proceedings (physical representation and written representation)<br><i>Quantity</i>  | 18                     | 30                     |
| Proportion of completed administrative proceedings in the court and Authority decisions left effective in favour of the Authority<br><i>Percentage (calculated once per year)</i>  | >80                    | 100%                   |
| Provided explanations, opinions, proposals, ensured development of regulatory enactments and guidelines<br><i>Number of documents</i>  | 230                    | 259                    |
| incl. provided explanations, opinions, proposals, ensured development of regulatory enactments and guidelines in relation to application of URTPPL<br><i>Number of documents</i>   | 12                     | 15                     |
| incl. in relation to application of Section 88 of SASL<br><i>Number of documents</i>   | 120                    | 72                     |
| Eliminated restrictions imposed by public administrative bodies (achieved positive proportion to the total number of implemented measures)<br><i>Percentage (calculated once per year)</i>   | 20%                    | 24%                    |
| Raising of public understanding of free and fair competition<br><i>Total number of measures</i>  | 20                     | 34                     |
| incl. in relation to application of URTPPL<br><i>Total number of measures</i>  | 3                      | 5                      |
| Positive evaluation of activities by the Competition Council from entrepreneurs (% proportion of survey answers to the respective question was "positive" and "rather positive")<br><i>Percentage (calculated once per year)</i>           | Not calculated in 2019 | Not calculated in 2020 |
| The role and recognition of the Competition Council in the international environment has been strengthened (number of publications and events with taking the floor)<br><i>Total number of measures</i>                                    | 34                     | 55                     |
| Personnel turnover (number of employees who have left against the total number of employees)<br><i>Percentage (calculated once per year)</i>   | <20                    | 28%                    |
| Loyalty of employees (% proportion of employees who have answered in the survey that they will continue legal employment relations with the Authority for the next two years)<br><i>Percentage (calculated once per year)</i>              | >85                    | Not calculated in 2020 |
| Public benefit from the operation of the Competition Council   | >20                    | 24.1                   |

## 2.1. The Authority during COVID-19

14. During the COVID-19 pandemic, the Competition Council ensured the work process remotely – majority of meetings, obtaining information and explanations, organising oral hearing in online mode, including fully remote meetings of the Council.

### 2.1.1. Challenges of the pandemic

15. Despite the capability of the Authority to adapt to the conditions caused by the pandemic, processes of investigation cases had to be adjusted to the existing epidemiological situation. For example, the Authority had limited possibilities to carry out procedural activities in companies in order to obtain evidence on alleged infringements of the competition law. Also, upon a request of market participants, observing the legal framework concerning the emergency situation, terms for replying to information requests and examination of merger cases were extended, such terms exceeding the decision-making term stipulated by the Competition Law.

### 2.1.2. Impact on competition of measures introduced by state

16. Since the first wave of COVID-19 pandemic, the Competition Council received several complaints on unequal competition situation, which was promoted by restrictions and support mechanisms introduced by the government for mitigating the consequences of the crisis. For example, according to the Cabinet of Ministers Regulations complaints were received on unequal attitude towards lessees of commercial premises. The Regulations stipulated that lessees that lease premises from a public administrative body – state or local government, or their capital companies – can be granted release or reduction of rental fee, as well as release from interest on arrears or contractual penalty. Such reliefs and advantages are not available to lessees that lease premises from private persons.

17. In the opinion of the Competition Council, state support mechanisms cannot create advantages for separate companies and, at the same time, cause competition distortions on the commercial premises lease market in general.

18. The Competition Council also assessed the idea of setting maximum prices and state intervention in free market. On a national scale, an initiative was discussed to set maximum prices for face masks and disinfectants, because increase in demand and prices for these products had been observed during the crisis. The Authority held a view that administrative setting of maximum prices for the entire market could have negative impact on availability of goods and competition in a long-term perspective, for example, preventing offer of these goods on the Latvian market or competitors adjusting their prices close to the set limit.

### 2.1.3. Prevention of infringements

19. During the extraordinary situation, the Competition Council actively focused on prevention of infringements of the competition law, incl. informing entrepreneurs, their associations and organizations about prohibited agreements and abuse of market and procurement power during the crisis, as well as prohibited information exchange, for example, within associations.

20. The sectors that came to attention of the Competition Council involved finances, medicine and distribution of goods related to COVID-19 protective measures, as well as retail sales, where the Competition Council found during the market inquiry shortcomings in the procedure of application of contractual penalties between retailers and suppliers



during COVID-19 pandemic, and gave recommendations for elimination of these shortcomings.

## 2.2. Decisions of the Competition Council

21. In 2020, the Competition Council adopted a total of 14 decisions. The Authority detected 1 abuse of dominant position and 2 procedural infringements. See Table 2 for all the decisions taken by the Competition Council of Latvia in 2020.

**Table 2. Statistical summary of decisions**

| Abuse of dominant position       | 1         |
|----------------------------------|-----------|
| Detected infringement            | 1         |
| <b>Mergers</b>                   | <b>11</b> |
| Cleared mergers                  | 11        |
| <b>Procedural infringements</b>  | <b>2</b>  |
| Detected infringement            | 2         |
| <b>Total number of decisions</b> | <b>14</b> |

22. In total, the Authority imposed fines in the amount of 5 701 637 euros. The amount of fines was based on turnover of the previous financial year for the market participant involved, as well as other factors, such as the severity, length and consequences of the violation.

23. In 2020, the Competition Council reviewed 11 merger cases. All mergers were cleared as no harm to the competition was detected.

## 2.3. Legal proceedings

24. In 2020, three legal proceedings were completed in relation to decisions adopted by the Competition Council. In all cases legal proceedings ended in favour of the Authority. In total, representatives of the Competition Council ensured legal representation in 30 court hearings.

25. In 2020, companies that were penalised for infringements of the competition law, incl. after termination of legal proceedings and coming into effect of the decision adopted by the Competition Council, paid 934,957.36 euros into the state budget.

26. In addition, the Authority was intensively attracted for giving opinions in total in seven proceedings at the Constitutional Court and the Court of Justice of the European Union in 2020. The Authority has given its opinion to the Constitutional Court regarding amendments to the Law on Institutions of Higher Education, restrictions for advertising of medicinal products, Riga City Council Dismissal Law from the perspective of the competition law, as well as regarding restrictions on gambling activities during COVID-19 pandemic. Over the course of this period the Competition Council has also participated in preparation of national positions for the Court of Justice of the European Union on topical issues of application of the competition law, as well as got involved as an independent participant of the proceedings for the first time, providing explanations of the Authority in preliminary ruling proceedings, where a decision adopted by the Competition Council has been appealed.

## 2.4. Investigation of Violations of the Competition Law

### 2.4.1. Prohibited agreements

#### *Prevention – facility for elimination of infringements*

27. In cases, when the Competition Council detects features, which may indicate to a prohibited agreement of companies, but these features do not indicate to a significant harm for competition, the Authority can issue a warning.

28. In 2020, the Competition Council issued a warning to 7 persons in total in three cases of detecting features of alleged prohibited agreements. In two of these cases, the Authority established that features of alleged prohibited agreement can be observed not only in activities of companies, but also the conduct of public administrative bodies – local governments and their capital companies, which organise procurements – has not promoted fair competition.

29. Warnings comply with the “Consult at first” principle introduced by the state administration – first to educate instead of punishing. So far, warnings have been successful as an alternative method for prevention of infringements, because none of the persons being warned has come to attention of the Competition Council repeatedly for similar non-conformities.

#### *Self-assessment tool for entrepreneurs*

30. The Competition Council of Latvia has prepared a self-assessment tool for entrepreneurs, so that they could verify in an easy manner, whether they have not engaged in a prohibited agreement with competitors due to their negligence or lack of knowledge.

31. The self-assessment tool highlights the most common situations that may be faced by entrepreneurs. For example, a company is asked by another tenderer not to participate in a particular procurement, or vice versa – to participate, but without real desire to win.

32. Entrepreneurs can assess their conduct by filling in an anonymous survey – <https://ej.uz/parbaudiuznemumu>.

#### *Construction companies – still under close scrutiny*

33. Until August 2021, the Competition Council has to conclude investigation regarding alleged bid-rigging agreement among at least ten leading companies in the construction sector. The case investigation was commenced after the Authority became acquainted with the information provided by the Corruption Prevention and Combating Bureau, which indicated to alleged infringements of the Competition Law.

34. Over the course of several years the involved construction companies have allegedly coordinated their conduct and concluded prohibited agreements on market distribution and conditions for participation in procurements of public and private customers all across Latvia. In order to make obtaining of evidence more efficient, the Competition Council together with the Corruption Prevention and Combating Bureau carried out joint and extensive investigation activities. Whereas in 2020 investigation was carried out independently within the framework of the competence of each authority.

### **2.4.2. Abuse of a dominant position**

#### *An infringement in the railway freight transport market*

35. At the end of 2020, the Competition Council imposed a fine of 5 694 174 euros on SIA “LDZ CARGO”, a subsidiary of the state joint stock company “Latvijas dzelzceļš”, for abuse of the dominant position, whereas VAS “Latvijas dzelzceļš” as the holder of capital shares is obliged to assume joint and several liability for payment of the fine.

36. Upon reorganisation of VAS “Latvijas dzelzceļš” in 2007, its subsidiary SIA “LDZ CARGO” took over the provision of freight transport services in Latvia. Over the period from 2007 until 2020, SIA “LDZ CARGO” constantly ensured 70-80 % of railway freight transport in Latvia, although another three carriers operated on this market.

37. The Competition Council established that for a long period of time SIA “LDZ CARGO” has been an inevitable cooperation partner to every client that wanted to carry railway freight through Latvia, crossing the border of Russia and Belarus. Consequently, in these border areas every client had to purchase the freight transport service from SIA “LDZ CARGO”, regardless whether further freight transport in Latvia was carried out by SIA “LDZ CARGO” or any of its competitors. SIA “LDZ CARGO” used this situation to offer various reliefs, for example, discounts, to its own clients that are using services provided by the capital company throughout the route. Whereas for customers that chose any of the three competing private merchants SIA “LDZ CARGO” applied a standard tariff. It was economically disadvantageous for customers to choose competitors of SIA “LDZ CARGO” as the service providers.

#### *Inquiry on the waste management market in Riga*

38. In 2020, active investigation of the case initiated by the Authority in 2019 against Riga City Municipality and SIA “Getliņi EKO” on alleged infringement under Article 102 of the Treaty on the Functioning of the European Union (TFEU) – abuse of dominant position – continued.

39. The Competition Council objected to Riga City Municipality idea to entrust provision of the waste management service to one company for a period of 20 years, instead of previously operating four service providers. By initiating an infringement case and adopting a decision on application of interim measures, the Competition Council achieved that the concession agreement is suspended in the part on collection and transport of household waste in Riga.

40. Considering that more than a half of all waste of Latvia is collected in Riga, this significant market monopolization for a period of 20 years would not only have negative impact on consumers, who would not be protected from disproportionate increase of prices in the future, but also would critically affect competition on the market. Moreover, creation of dominant position on the market, where competition conditions have existed previously, influences the market structure significantly, completely eliminating any competition on the specific market.

41. The Competition Council has to adopt a decision until 18 July 2021.

## **2.5. Unfair Retail Trade Practices Prohibition Law**

42. The Unfair Retail Trade Practices Prohibition Law (URTPPL) came into effect in Latvia on 1 January 2016. The aim of this Law is to balance the power of suppliers and retailers, and the supervisory authority of this Law is the Competition Council.

43. To ensure compliance with URTPL, the Competition Council provided 15 explanations and opinions in relation to application of the law in 2020. The Competition Council also implemented five educational events and educated in total 94 persons, incl. retailers, in order to explain the impact of adoption of the new Unfair Trading Practices Directive on the economic activity of retailers.

44. In 2020, the Competition Council implemented preventive measures for elimination of alleged infringement in two cases.

### ***2.5.1. Problems during COVID-19 crisis***

45. Upon beginning of COVID-19 outbreak in Latvia, the Competition Council gave recommendations to retailers and suppliers on cooperation during the emergency situation, reminding that the principles of fair retail sales have to be observed and that retailers are not allowed to impose unfair sanctions, if suppliers are unable to ensure execution of significantly larger orders for separate groups of goods during the crisis.

46. After the “first wave” of COVID-19, the Competition Council detected significant problems related to imposing of unfair and groundless sanctions and returning of goods. Retailers imposed repeated sanctions for the goods ordered, but not delivered. Such retail practice cannot be considered fair and justified, especially because such non-delivery has occurred as a result of logistics disruption caused by COVID-19 emergency situation. The market study also showed that cooperation agreements concluded between retailers and suppliers included different sanctions application conditions for promotional goods and non-promotional goods, and agreements provided for a specific applicable contractual penalty in euros instead of percentage of contractual penalty, which does not meet the conditions stated in Law.

### ***2.5.2. Express stores impact on the market structure***

47. Since 2018, two largest retailers in Latvia, SIA “RIMI Latvia” and SIA “Maxima Latvija”, have developed their operation in the express store sector, strengthening the impact on the consumption goods retail market. In 2020, the Competition Council conducted market study, concluding that express stores entering the market currently do not cause significant impact on the structure of retail market in general; however, the Authority expressed its concerns about local impact on the market structure in the future.

## **2.6. Mergers**

48. One of the tasks of the Competition Council is to carry out assessment of merger transactions and notified agreements of large companies to prevent possible negative impact on competition and consumers. In 2020, the Competition Council adopted 11 decisions on mergers.

49. Market participants involved in mergers paid fees equal to 48,000 euros into the state budget for assessment of merger notifications. To facilitate submission of merger notifications by companies, the Competition Council provided 12 pre-merger consultations.

### ***2.6.1. Companies merge and strengthen competitiveness***

50. In 2020, the Competition Council did not detect possible threat to competition in any of 11 assessed merger cases and allowed these transactions.

51. The assessed transactions were implemented in various sectors. For example, in January 2020, the Authority allowed a merger of car wholesalers dealing with distribution

of Hyundai, Suzuki, Ssang Yong, Peugeot and Isuzu passenger cars in Latvia. Also, the Competition Council allowed mergers in the banking sector, television wholesale and retail market, and a Luxembourg company to acquire capital shares of AS “LIDO” in 2020.

52. Although majority of merger transactions did not cause significant negative consequences for competition, two mergers were assessed in more detail manner, also by conducting in-depth economic analysis.

## 2.7. Sector inquiries

53. In 2020, the Competition Council concluded inquiries on eight markets, incl. two market studies in retail sales, and in several cases conformity of conduct by public administrative bodies to the principles of fair competition was assessed. The purpose of market inquiry is to obtain in-depth insight into various sectors of the national economy, identify the competition situation and find solutions for improving the situation.

### 2.7.1. *The procurement is favourable for one company*

54. During the market study, investigating the procurement of car transport number plates making and supply, organised by the Road Traffic Safety Directorate (RTSD), the Competition Council detected competition restrictive requirements in the procurement regulations. This resulted in only one company – a long-standing cooperation partner of RTSD – to participate in the tender.

55. Comparing number plates procurement procedures among the Baltic states, the Authority concluded that the costs per one number plate in Latvia are approximately three times higher than in Estonia and five times higher than in Lithuania. Although the Latvian procurement procedure involves more specific requirements than in the neighbouring countries, the Competition Council holds a view that such requirements cannot justify such a significant increase in price.

56. One of the specific requirements included in the procurement regulations, due to which other candidates did not participate in the tender, was supply of express number plates or number plates made upon an individual order in a very short term – within 30 minutes, while the vehicle registration service is received. Such service can be offered only by a company, which operates in the premises of RTSD central office in Riga. It is remarkably that the procurement winner and its attracted sublessee SIA “Latsign” lease CSDD premises already since 1992, and it had an effective premise lease contract also at the moment of the procurement.

57. Entrepreneurs mentioned as another restrictive requirement in this procurement the short term – 45 days – for supply of first number plates to RTSD after conclusion of the contract and the unclear requirements for development and maintenance of centralised number plates making and accounting system.

### 2.7.2. *Competition restrictions in ticket trading services*

58. During the market study, the Competition Council concludes that cultural institutions include competition restrictive conditions in their procurements, when selecting ticket trading service providers.

59. The Competition Council detected that cultural institutions not always observe the amount of service fee charged from consumers, when selecting the economically most favourable service in the procurement. Depending on the selected ticket trader, these fees are set both as fixed fees up to 1.50 euro per one ticket, and as a percentage up to 7 % of the ticket price.

60. In order to increase competition and acquire the financially most beneficial solution for consumers, the service fee shall be set as one of the procurement assessment criteria, when organising a procurement.

61. The Competition Council also noticed that cooperation agreements on ticket trading are concluded for excessively long periods; therefore, it would be advisable to conclude agreements for a period from one year up to three years, instead of the usual five years.

## 2.8. Improvements in the Legal Framework

### 2.8.1. *Competition neutrality has come into effect*

62. On 1 January, amendments to the Competition Law came into effect in Latvia, which prohibit public administrative bodies – the state, local governments and their capital companies – from infringement of the principles of equal competition by groundlessly restricting the possibilities of private entrepreneurs to operate on the market.

63. These amendments to the Competition Law prohibit public administrative bodies from discrimination of other market participants, creating advantages for their capital companies and implementing activities that result in entrepreneurs being forced to leave the market. If the Competition Council spots any alleged infringement of the law conditions, the Authority will first initiate negotiations with the particular state authority, local government or its capital company. In case of unsuccessful negotiations, the Authority will be entitled to impose legal obligations and disciplinary sanctions on capital companies – a fine up to 3 % of the turnover of the previous year.

64. The first year of amendments to the Competition Law was basically focused on education and consulting. To help public administrative bodies adapting to the new requirements of the law, the Competition Council organised several educational activities in 2020 and acquainted both with the competition neutrality assessment guidelines, and the self-assessment tool, by using of which a public administrative body can verify conformity of its activities to the principles of fair competition.

### 2.8.2. *Resources required for all competition authorities in Europe*

65. To harmonise investigation of competition infringements and make operation of competition authorities of the European Union Member States more efficient, the European Parliament and the Council adopted the so-called ECN+ Directive in 2018, following a proposal by the European Commission, which states that national competition authorities shall be provided with the required powers, independence guarantees and resources to be able to ensure efficient prevention of infringements of the competition law.

66. ECN+ Directive provides for the necessity of competition authorities for efficient investigation and decision-making instruments, properly developed Leniency Programme, independence in the decision-making and investigation process, and sufficient technical, technological and human resources for fulfilment of their tasks.

67. The Directive shall be integrated into the national laws in 2021. Within the framework of development of the regulatory framework in 2020, the planned amendments to the Competition Law related to ECN+ Directive to be integrated, have been prepared and submitted for cross-institutional coordination at the meeting of the State Secretaries. In addition to introduction of requirements of ECN+ Directive, the Competition Council has prepared amendments to the Cabinet of Ministers Regulations that provide for a procedure regarding determination of fines.

### *2.8.3. Prohibitions of unfair trade practice are extended*

68. In 2018, the European Parliament, the Council and the Commission agreed on a new set of conditions, which will ensure protection of European Union farmers and companies operating in the food products supply chain against unfair practice and trade.

69. Unlike URTPPL, which already exists in Latvia and protects in particular the interests of suppliers against market power of retailers, this Directive refers the types of unfair trade practice to the entire food products supply chain – from the manufacturer to the retail store.

70. In 2020, the Competition Council in cooperation with the Ministry of Agriculture participated in several cross-institutional meetings aimed at integrating the new legal framework into the national laws, which provides for extension of the existing URTPPL in the case with Latvia. The new draft Unfair Retail Trade Practice Prohibition Law will come into effect on 1 November 2021.

## **2.9. Impact on competition of public administrative bodies**

### *2.9.1. Involvement of the state and local governments in entrepreneurship*

71. In 2020, the Competition Council received in total 200 applications in relation to activities of public administrative bodies – the state, local governments and their capital companies – incl. alleged competition distortion.

72. To eliminate the risks of public administrative body groundlessly engaging in commercial activity and causing competition distortion by such action, public administrative bodies, when establishing new capital companies or reassessing their participation in the existing capital companies, have to carry out assessment of planned activities.

73. Such an assessment, including evaluation of the impact on competition, shall be carried out at least once every five years. The Competition Council provided in total 72 opinions in 2020.

### *2.9.2. A Self-assessment tool - before establishing a capital company*

74. To facilitate the assessment process for public administrative bodies in relation to participation in a capital company, the Competition Council prepared a self-assessment tool in 2020.

75. The aim of this self-assessment tool is to facilitate convenient legal and economic assessment of the economic activity for public administrative bodies. This assessment covers all most essential risks that a public administrative body shall definitely pay attention to, thus obtaining all the necessary information before the decision-making on establishment of capital company or retaining of participation in a capital company.

### *2.9.3. The principle of competition neutrality*

76. On 1 January, amendments to the Competition Law came into effect, which impose an obligation to observe competition neutrality on public administrative bodies.

77. The Competition Council detected that because of public administrative bodies actions its' capital company SIA "Jēkabpils ūdens" had advantage of the provision of sewerage services that were not available to private service providers. To eliminate the infringement of the competition neutrality, the Competition Council commenced a negotiation procedure with SIA "Jēkabpils ūdens" in 2020.

#### ***2.9.4. Competition promoting regulatory enactments***

78. To prevent possible competition restrictions, which may be facilitated by the regulatory framework, the Competition Council prepared 42 opinions concerning approximately 15 sectors of the national economy for legislators in 2020. In nine cases the Competition Council achieved development of regulatory framework that is favourable for competition.

79. The Competition Council made objections to amendments to the Waste Management Law to resolve the unfair requirement – starting from 2020, end-of-life vehicle processing companies shall provide a financial security equal to 100,000 euros, regardless whether a company processes 20 vehicles or more. This requirement resulted in pushing two thirds of market participants out of the market. After the objections made by the Competition Council, rights for the Cabinet of Ministers to differentiate the amount of the financial security were provided for.

80. Moreover, the Competition Council called to make amendments to the Public Procurement Law, in order to eliminate the possibility for entrepreneurs related to bid-rigging to avoid the prohibition to participate in public procurements. The Competition Council proposed that also persons related to bid-rigging, for example, parent companies that are responsible for payment of fine, may be excluded from public procurement. The proposal was accepted by the Cabinet of Ministers and currently it is in the adoption process in the Parliament.

81. Already for years the Competition Council has expressed its opinion that local governments create a risk to fair competition on the media market by issuing their printed informative publications. Therefore, the amendments to the Law adopted on 8 October, which stipulate that local governments are entitled to issue free printed informative publications not more than once per month, where they will be able to inform the public about fulfilment of their functions, can be assessed as positive.

82. To facilitate adoption of regulatory framework that is favourable for competition, representatives of the Competition Council defended the principles of fair competition in 40 events, incl. in the Cabinet of Ministers, the Saeima, etc.

### **3. Management of the Competition Council**

#### **3.1. State Budget Financing**

83. The financial resources (total) planned at the start of the reporting period comprise 1,304,484 euros, their execution – 1,303,132 euros, incl. reallocated funds equal to 13,642 euros. In 2020, the Competition Council acquired 99.9 % of the financing allocated to the Authority. Please, see Table 3.



**Table 3. Budget allocation of the Authority**

| No.    | Financial indicators   | In the previous year<br>(actual execution) | In the reporting year |                     |
|--------|--|--|-----------------------|---------------------|
|        |  |  | plan                  | actual<br>execution |
| 1.     | Financial resources for covering costs (total)   | 1,387,629                                  | 1,304,484             | 1,303,132           |
| 1.1.   | grants   | 1,387,629                                  | 1,304,484             | 1,303,132           |
| 1.2.   | paid services and other own revenue  |  |                       |                     |
| 1.3.   | foreign financial assistance   |  |                       |                     |
| 1.4.   | donations and gifts  |  |                       |                     |
| 2.     | Expenditure (total)  | 1,379,900                                  | 1,304,484             | 1,303,132           |
| 2.1.   | maintenance expenditure (total)  | 1,351,523                                  | 1,290,484             | 1,290,484           |
| 2.1.1. | current expenditure  | 1,351,523                                  | 1,290,484             | 1,290,484           |
| 2.1.2. | interest expenditure   |  |                       |                     |
| 2.1.3. | subsidies, grants and social benefits  |  |                       |                     |
| 2.1.4. | current payments into the budget of the European Community and international cooperation |  |                       |                     |
| 2.1.5. | transfers of maintenance expenditure   |  |                       |                     |
| 2.2.   | expenditure for capital investments  | 28,377                                     | 14,000                | 12,648              |

### 3.2. Personnel

84. The Authority had 47 positions filled at the end of 2020, out of whom 39 had the status of public service officials, and eight – the status of employees. There were 48 positions in total.

85. In 2020, the personnel turnover of the Competition Council reached 28 % due to insufficient financing, which prevented full-fledged operation of the Authority. 13 persons terminated the state civil service relations and employment legal relations, while 18 persons – commenced such relations.

#### 3.2.1. Number of employees at each position:

- 3 Council Members;
- 1 Executive Director;
- 24 Case Handlers;
- 9 Support staff members;
- 7 Lawyers;
- 3 Economists.

#### 3.2.2. Human resources applied to:

- Enforcement against anticompetitive practices – 24 (all employees in Legal department, Analytical department and Cartel department). Investigation typically is conducted by a team of one case handler and one lawyer from the Legal Department. In complex cases a project team of several employees is formed.
- Merger review and enforcement – same employees do both, antitrust and merger review cases. The average number of employees that work with mergers is eight (3 economists, 3 case handlers and 2 lawyers).

- Advocacy efforts – the Authority does not have exact calculation. At least six members of Competition Promotion Unit, 3 Board members, two persons from the Communication Division, and some other case handler who were also actively involved in promoting competition culture and advocacy.
86. The average age of personnel of the Competition Council is 36 years. 72 % or 34 employees are women, and 28 % or 13 employees – men.
87. In 2020, 77% of employees had a Master's degree. Considering the specific nature of the institution, the majority of employees have acquired higher education in either Legal or Economic fields. The rest have acquired education in Business Management, Communication Science and other fields.
88. During the year, employees of the Competition Council attended 59 training courses held by external lecturers, thus raising their professional competence on fraud prevention, data visualization, anti-corruption measures, processing of personal data, entrepreneurship and economics, as well as other topics. To ensure exchange of good practice in the organization and institutional memory, two internal events took place at the Competition Council in 2020, incl. training activities that were implemented through assistance by the Authority employees.

### 3.3. Improving Performance of the Authority

89. To ensure successful and consistent operation of the Authority, the Competition Council improved several internal processes and developed respective internal regulatory enactments in 2020.
90. The Authority revised and updated the document management system to make internal circulation of documents successful and efficient, and to ensure that the management procedure is implemented according to the current situation.
91. Management documents – the rules of procedure of the Authority and one individual department – were updated. The procedure of organisation of business trips was improved, and a new procedure of organisation of procurements was developed. The conflict of interest reporting procedure and restricted access policy was updated. The Authority revised and improved the accounting documents circulation scheme.
92. Ensuring conformity of the Authority's operation to the legal framework on protection of personal data, competences for cooperation with the supreme authority were specified, one impact assessment was carried out and the composition of the established incident commission was updated. Also, the state secret and anti-corruption internal control system was improved, incl. updating of the list of positions exposed to the corruption risk, and revision of the anti-corruption plan.
93. In 2020, the Competition Council strengthened its investigation capacity, acquiring new electronic evidence gathering, processing and analysis software and equipment, thus starting improvement of the technical provision of the Authority, intended for more efficient investigation of infringements of the competition law.
94. Considering the fact that the year 2019 is the final stage of the Competition Council 3-year strategy, the Authority developed a new operational strategy, which will cover the period from 2020 to 2022.

## 4. Communication with the Public

95. In 2020, representatives of the Competition Council ensured participation in 34 events organised by the Authority or other organizations.

### 4.1. Education of target groups

96. To prevent the most significant infringements of the competition law, for example, prohibited agreements of entrepreneurs, the Authority organized educational seminars and webinars for entrepreneurs. In order to promote development of procurement environment, the Competition Council held seminars for organizers of public procurements, thus strengthening the competence to recognize features of bid-rigging among tenderers.

97. Considering that amendments to the Competition Law came into effect on 1 January 2020, the Competition Council addressed enhanced education of public administrative bodies – the state, local governments and their capital companies – on the new norm of the Law. The Competition Council not only organized a webinar “Involvement of the state in entrepreneurship” for representatives of the state capital companies, but also visited Kuldīga with an educational seminar in cooperation with the Latvian Chamber of Commerce and Industry. Also, other events for public administrative bodies were implemented in 2020, for example, in cooperation with the Latvian Association of Local and Regional Governments, Procurement Monitoring Bureau and capital companies of Riga Municipality.

### 4.2. Central topic: public administrative bodies in competition

98. In addition to seminar events, the Competition Council organized two activities in the second half of the year, the main topic of which was decisions and activities of the state, local governments and capital companies regarding entrepreneurship. In autumn, the Competition Council invited entrepreneurs and other public members to participate in the Authority's campaign “Most Preposterous Obstacle to Competition” and submit unjustified obstacles that have been included in procurements by public administrative bodies. The Authority together with the Procurement Monitoring Bureau assessed the submitted obstacles for competition and awarded best participants with nomination “Competition Advocate 2020”.

99. In honor of the World Competition Day the Competition Council in cooperation with the Procurement Monitoring Bureau held the discussion event “Point of Contact: Competition”, where discussed the responsibility of organizers of public procurements in ensuring fair competition.

### 4.3. Activities for ensuring more extensive public involvement

100. Alongside education of various target groups, the Competition Council organized or participated in public activities implemented by other organizations – conferences, forums, thematic events, etc.

101. The Authority engaged in education of pupils and students, telling about the competition law within the framework of the Shadow Day and reading lectures to students of the University of Latvia and Turība University.

102. Alongside joint educational activities, the Competition Council had 71 cross-institutional cooperation meetings on various topics.

#### 4.4. Competition Council develops digital communication

103. In 2020, the Competition Council continued active use of various communication tools for reaching new audiences – in total 19 recordings of the Competition Council podcast and videos have been prepared.

104. The podcast on competition can be listened to on the website [www.kp.gov.lv](http://www.kp.gov.lv) and on the channel of the Competition Council on SoundCloud and Spotify platforms.

#### 4.5. Public participation

105. The Competition Council held 29 meetings with entrepreneurs and non-governmental organizations to discuss competition development and problem issues in various sectors and promote observing of principles of fair competition.

106. The Competition Council prepared three self-assessment tools, out of which two documents are targeted to public administrative bodies, and one – to market participants. One of these self-assessment tools was developed for entrepreneurs to be able to recognize possible bid-rigging risks in their activities. The second self-assessment tool was developed for state administration authorities to assess, whether establishment of their capital companies will not cause harm to competition. Whereas the third tool is intended for procurement organizers to be able to identify bid-rigging features in their procurements. In 2020, the Competition Council also started working on a self-assessment tool concerning vertical agreements of companies.

#### 4.6. International activities

107. In 2020, representatives of the Competition Council promoted recognition of Latvia and strengthened the position of the Authority in the international environment, taking the floor in 24 events abroad, incl. events organized by the Organization of Economic Cooperation and Development (OECD), the International Competition Network and the European Competition Network.

### 5. Priorities for 2021

108. The year 2021 is the second year of implementation of the 3-year (2020-2022) operational strategy of the Competition Council. The Competition Council has defined three priorities for achieving the set overarching goal of the authority:

1. More efficient protection of competition;
2. Professional, engaged and development- and cooperation-oriented employees;
3. More comprehensive education of the public and competition promotion.

#### 5.1. Support to market participants in operating under conditions of fair competition

109. According to the results of public opinion survey there are two significant problems in the competition area of Latvia: prohibited agreements in procurements and activities of state and local governments that create conditions of unequal competition or discriminate entrepreneurs; moreover, the Competition Council pays particular attention to competition distortions caused by public administrative bodies since 2020, when amendments to the Competition Law came into effect.

110. In addition to that, the Competition Council has to monitor and prevent infringements of abuse of the market power by the dominant companies, market concentration that is harmful for competition, unfair trade practice and inclusion of groundless competition restrictions in laws and other regulatory enactments.

111. Therefore, in the year 2021:

- The Competition Council will ruthlessly turn against the most severe infringements of the competition law, also concluding investigation of the alleged infringements in the construction and waste management sectors.
- In order to timely identify administrative obstacles or obstacles created by market participants for free and fair competition, during the market surveillance, the Competition Council will focus on the sectors with significant influence on the national economy, as well as the markets that experience rapid growth or introduce innovations that may increase the market influence in the nearest future; among other things, the authority will pay attention to competition conditions in retail sales, insurance and finance, and heat supply areas, and the impact of digital platforms on customers and competitors.
- Considering that Section 141 of the Competition Law came into effect in 2020, extending the authority's powers in surveillance of public administrative bodies and their capital companies, and that in 2020 and 2021 majority of state and local government capital companies have to carry out reassessment of their activity on markets in accordance with Section 88 of the State Administration Structure Law, the Competition Council will continue consulting and education of public administrative bodies with the aim to prevent groundless competition obstacles and ensure fair competition conditions; however, if necessary, the authority will immediately use its powers stipulated in the Competition Law, conducting in-depth investigation of priority cases.
- The Competition Council will actively address inclusion of groundless competition restrictions in the regulatory framework of different sectors, and will participate in the process of improvement and development of the regulatory framework of the competition law in order to achieve closer harmonisation of the Latvian and European competition laws, also integrating into the national regulatory enactments the ECN+ Directive, which determines that all European competition authorities shall be provided with resources required for work, and the Directive on prohibition of unfair trade practice in the entire food supply chain, and will eliminate the identified shortcomings in the effective regulatory enactments concerning the competition law, based on the accumulated experience.

## **5.2. Strong, independent and influential state administration authority, the opinion of which is taken into consideration**

112. In order to provide as efficiently and qualitatively an opportunity for every market participant to carry out the economic activity under free and fair competition conditions, and to facilitate development of competition in all sectors of the national economy, the Competition Council needs to constantly develop and strengthen the capacity of the authority according to the current trends.

113. Under the influence of various factors, mainly the economic globalisation and new digital tools, markets and behaviour of market participants experience rapid changes. Detection of infringements of the competition law, bid-rigging in particular, becomes increasingly more complicated due to the complexity of infringements, as well as technical

and technological development. The technical equipment of the Competition Council for obtaining and processing of digital evidence is insufficient and is lagging behind those solutions that are available to market participants for concealing the evidence. As a result, detection of competition distortions require from specialists of the authority not only new knowledge and methods of analysis, but also specific technical solutions, including automated tools that can record and analyse information that may indicate to alleged competition deformation on the market.

114. The necessity to strengthen the capacity of the authority is stressed both by recommendations of the Organization of Economic Cooperation and Development (OECD), and the ECN+ Directive.

115. Therefore, in the year 2021:

- The Competition Council will develop the HR management policy, making its formulation clear and understandable for employees, so that every employee could see their opportunity for growth in this policy.
- The Competition Council will take care of development of competencies, facilitating personal growth of employees.
- The Competition Council will strengthen the capacity of information technology, establishing an IT laboratory and ensuring an opportunity for employees to use the latest IT technical equipment for obtaining and processing of electronic evidence, paying particular attention to the possibilities of development of automated tools for identification of features of cartel agreements.

### **5.3. Education of the public, strengthening cooperation with partners on a national and international scale**

116. For entrepreneurs to understand the benefits of fair and free competition and act in good faith, the Competition Council needs to implement its communication activities not only in its direct target group (entrepreneurs, public administrative bodies), but also at the secondary level, for example, developing targeted communication activities at the level of societies of business communities (societies representing entrepreneurs), at the level of organizations, i.e., cooperating with other state administration authorities that deal with education of market participants, and at the political level, timely following changes to regulatory enactments and stimulating their compliance with the principles of fair competition.

117. Therefore, in the year 2021:

- Market participants, especially those who represent the sectors that are most frequently “cartelised” and affected by other infringements of the competition law, as well as public administrative bodies, will be educated in a way that is convenient for them: in seminars, webinars and individual consultations.
- In case of less important competition restrictions, the Competition Council will preventively warn and educate both companies and public administrative bodies, using the “Consult at first” principle.
- The authority will continue to develop tools that encourage entrepreneurs and public administrative bodies to control their conduct and participate in prevention of competition infringements themselves, for example, through developing convenient self-assessment tools and promoting the opportunities offered by the Leniency Programme.

118. Considering the rapid development of information technology and habits of the public in using information, the Competition Council will strengthen its digital ecosystem as a unified whole, using different tools of digital communication (podcasts, video messages, infographics) and also actively addressing new audiences on social media platforms.