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REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES

Contribution from Latvia

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Regional Competition Agreements: Benefits and Challenges

-- Latvia --

1. Indeed, international scope of competition enforcement gives us both opportunities and challenges. Because no competition authority in the world would be able to operate separately and isolated. Markets are globalizing, and competition enforcers across the world are dealing with similar problems. Infringements and cases are getting more complex, while mergers more frequently appear among strong competitors including cross-border dimension. Also, market participants require more coherent approach in procedural rules and remedies applied among jurisdictions if the merger filing is made in several jurisdictions.

2. EU competition enforcers are granted with possibility to use and participate in different platforms such as ECN, ICN, OECD, UNCTAD, ABA, which enhance the overall knowledge about developments, best practices in competition enforcement, promotion and advocacy as well as strengthen their capabilities.

3. One of the four directions for the Competition Council of Latvia (the CC) set within the strategy is to provide significant contribution to the development of competition law and practice on the international level.

4. Further on we will not touch upon our experience gathered while acting in the before mentioned international forums. Speaking about a cross-border component, there are two areas of a great importance for us. They are:

- intense cross-border cooperation on the Baltic regional level (Latvia, Lithuania and Estonia, as well as with the Nordic countries and other EU MSs);
- providing support to the countries which are in a transition period, in process of developing their competition policy (Ukraine, Moldova, Georgia, etc.).

1. Factors that foster cooperation in Baltic region

5. Baltic States are similar in many ways – our cultures, legal traditions, historical and economic development have many things in common. Barriers in some markets (energy, natural gas, railway cargo, etc.) could be regarded as more common due to historically identical problems, solutions developed and integrity of networks different from other regions.

6. Baltic market and economies can be considered as small in comparison to ones of other regions on EU from the perspective of market players, and mostly they operate in all three countries as in one market (in retail, electricity market etc.). Also, undertakings that start their business in one of the countries usually choose to expand their business in other Baltic countries as well.

7. Established legislative EU wide framework plays an important role to strengthen cooperation. Regulation 1/2003¹ empowering EU MSs competition authorities to apply Articles 101 and 102 of the TFEU also set very detailed framework and procedures for cooperation within EU MSs. The European Competition Network (ECN) common cooperation model allows the CC to cooperate with all MSs, but more intense cooperation is with geographically and economically closely located Baltic countries creating good opportunities for more narrow regional cooperation. Moreover, the so-called Directive ECN+ which should be implemented in the nearest future will be the additional tool in the regulation of cooperation.

8. Regional cooperation that is framed in certain legal framework is fostered by ECN. In other fields, there is no necessity for official and signed RCAs because it happens due to historical, geographical and other factors. Also, it is helpful to use existing regional cooperation models (like Nordic Alliance) to join in certain cases.

2. Ways of cooperation in Baltic region

9. Although there are no formally signed agreements between the CC and competition authorities of Lithuania and Estonia, it has never been an obstacle when it comes to cooperation, requests for information or exchange of experience. Moreover, the CC underlines that it is open to the informal cooperation and exchange of information, i.e., if question or proposal is sent via e-mail.

10. Historically, after the Baltic states gained independence the OECD played an important role during the first steps of establishing free market economy and promotion of cooperation between competition authorities of the Baltics States, holding visits of OECD and FCC experts and organizing workshops. Founded cooperation did not disappear – it was transformed into the traditional annual Baltic Competition Conference (the BCC). This year already the 14th BCC was held and it took place in Latvia.

11. Within the BCC the number of participating countries tend to increase, involving competition authorities from Poland, Nordic counties (Sweden, Finland, Denmark, Norway), Ukraine, and Georgia. This also contributes to our cooperation on the daily basis, enforcement and merger cases. As mentioned above regarding priority to provide support to the post-soviet countries, the CC has Cooperation Agreements with Ukrainian, Moldovan and Georgian competition authorities.

3. Enforcement

12. From time to time, the CC and other competition authorities exchange information (also confidential), conduct dawn raids after the request of other Baltic competition authorities and in the CC cases participate in dawn raids conducted in neighbouring countries.

¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L1, 4.1.2003, p.1).

13. For example, in 2012, the CC opened a case on alleged prohibited agreement on the market sharing in the pharma industry. As one of the possible cartel participant was Lithuanian undertaking, the CC requested the support from the Lithuanian colleagues to conduct dawn raid.

14. In 2016, the Estonian competition authority supported the CC investigation of alleged prohibited agreement by providing information (also confidential) from the commercial register on the market participants and undertakings concerned.

15. In 2017, Latvia supported Estonian competition authority in its investigation of abuse of dominant position in the telecommunication sector gathering and providing information on the prices of services of cable rental applied by state owned market operator in Latvia.

16. In 2018, the CC received an information from the Latvian retailer of construction materials which had entered Lithuanian market. Retailer informed, that the suppliers in Lithuania have tried to influence the resale prices of this retailer. As this possible infringement took place in Lithuanian market, the CC informed the Lithuanian competition authority, and later, the CC supported the Lithuanian competition authority conducting dawn raid.

4. Merger control

17. Baltic competition authorities also cooperate within the scope of mergers. When pan-Baltic mergers are conducted, all three competition authorities may consult with each other on, for example, market definitions, possible remedies, etc. It helps to define the geographical market if the market is wider than Latvia, to analyse supply and demand side, especially on the production and wholesale level. This may help to avoid contradicting outcomes.

18. A few times cooperation between the CC and Lithuanian and Estonian competition authorities included support in obtaining information on the market situation. For example, in 2014 and in 2015, the Estonian competition authority supported the CC concerning the merger cases in the markets of production of confectionary and dairy products. Estonian colleagues provided data on the suppliers, brands and prices in retail that covered also confidential data.

5. Market inquiries

19. Information exchange is also about the market processes, insensitivity of competition, price dynamics – a comparison of the situation in various countries and using it for advocacy purposes.

20. Sectors like dairy, waste management, pharma and others are on the permanent line of sight. The cooperation includes exchange of information of current developments, discussions on the proposals for regulation delivered by market participants. For example, cyclic fluctuations of raw milk price are the common trend in Baltic States which is also subject to the global trends. Price decrease is a common problem to the farmers and price increase – to the milk processors. Periodically, market participants propose to implement artificial market regulation instruments and this is the subject also for discussions between the competition authorities. Sometimes cooperation is wider than the Baltic region,

however the Baltic region is the main point of reference. Another example of cooperation within market inquiries are the CC's inquiry on the car technical inspection services, food distribution, etc.

6. Developing competition policy

21. Being aware of each other's competition legislation, we gain a better insight of competition challenges and can use the opportunity to improve ours, as well. For example, it has been already three years since we in Latvia are trying to empower the authority with rights to intervene against public administrative bodies that distort the level playing field. Such powers are granted to the Lithuanian Competition Council, and we see that there is a strong need for such powers in Latvia.

22. Due to the importance of the topic during the last BCC, in May 2018, Heads of Baltic competition authorities together hold an interview. Topics also concerned competition distortions created by public administrative bodies. After comparing market situations, it was concluded that, this causes no problem for Estonia, while the problem in Latvia is similar with Lithuania.

23. We also support each other's advocacy efforts by sharing our conclusions from market inquiries and arguments against politicians in markets that are equally sensitive for our countries. Amongst them there are pharmacy, energy, waste management, natural gas supply market, retail sector, etc.

7. Expanding Baltic cooperation to Nordic region

24. The regional cooperation with Lithuanian and Estonian colleagues have proven worthy. Nevertheless, we are interested in expanding cooperation in direction of the North. A great start towards such cooperation was in 2015 when the CC got involved in the market study of waste management services with Nordic competition authorities.

25. Both at that time and now, this topic is equally important to all involved countries, thus, providing a fruitful platform for cooperation. Market developments in all involved countries lead to a reasonable question – is there a place for competition in waste management market that is so heavily regulated, supervised and controlled by municipalities? Therefore, we were happy to join the study and strengthen our in-depth knowledge and widen experience about the market structure and competition in other countries. During the study, the CC consulted with Nordic competition authorities on framework and methodology, and exchanged findings and conclusions about existing barriers in the markets.

26. In 2016, our authority published findings and discussed them in a public conference, where the representative from the Nordic Market took part and introduced with their conclusions. This gave an additional value to stakeholders of the Latvian market as the found problems are broader than one country.

8. Challenges still to overcome

27. There are several challenges to overcome while promoting international or at least cross-border regional cooperation.

28. Firstly, it requires to allocate significant resources. Small authorities are evidently having proportionally less capacity to devote resources for more intensive cross-border cooperation.

29. Secondly, it is a matter of priorities, aims and desired goals even in terms of one question – they might be different for each authority. Also in case of ex-officio market research which is important field for development of competition expertise, that fosters the identification of barriers in the market in a comprehensive manner there are still challenges in agreeing on common goals and priorities.

30. We are convinced that Baltic competition authorities in nearest future will be able to conduct joint sector inquiry. The initiative started few years ago, trying to establish a closer cooperation among chief economists of the Baltic competition authorities. While discussing possible markets to study for the following year, we failed to find the topic that would be relevant for all parties involved. Now, the CC implements a long-term planning for sector inquiries. This could help us to agree and plan joint inquiries that might be relevant to all Baltic authorities. Joint conclusions could strengthen our advocacy efforts towards policy makers (ministries, legislators, etc.).

31. To sum up what have been the benefits for the CC as the result of the RCA, we confirm that productive cooperation with other regional competition authorities has led to several benefits concerning enforcement, mergers, inquiries, advocacy, and legislation. The regional Baltic cooperation is quite successful, closer cooperation with Nordic region highly desired – for a better operation of authorities and fostering competition environment to undertakings.

32. In the case of the Baltic region, we share historical and similar challenges that may affect competition, thus, it is especially important for us to communicate, exchange experiences and find solutions. As saying goes “one should not to reinvent the wheel”, competition authorities that cooperate and communicate with each other may be more effective and knowledgeable.