

Unclassified**English - Or. English**

27 November 2019

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****COMPETITION FOR-THE-MARKET – Contribution from Latvia****- Session IV -****6 December 2019**

This contribution is submitted by Latvia under Session IV of the Global Forum on Competition to be held on 5-6 December 2019.

More documentation related to this discussion can be found at: oe.cd/cmkt.

Please contact Ms. Lynn Robertson [E-mail: Lynn.Robertson@oecd.org], if you have any questions regarding this document.

JT03455415

Competition for-the-market

- Contribution from Latvia -

1. Short description of the PPP project in the Riga waste management market and main competition concerns

1. Enforcement and advocacy challenges of the Competition Council ('CC') that arise when concessions have been offered mainly concern waste collection sector, which according to the Law on Municipalities is under the autonomous competence of the local municipalities.

2. In 2016 – 2017 Riga municipality started to elaborate a new household waste collection system. Based on that municipality intended to introduce a 20-year concession for waste collection with a single concessionaire for the whole territory of Riga. The new model would replace waste collection agreements with the existing four operators on the market. The CC objected to such plans arguing that this will significantly reduce competition in Riga waste collection market, will significantly narrow the range of potential bidders in selection process and possibly will diminish the entrance of potential competitors after the 20-year-period.

3. Existing waste collection system functioned according to the “competition in the market” model. Operators were free to compete for any client in Riga and were not assigned any territorially exclusive zone of operation. Due to the fact, that existing four operators were not selected by the municipality in an open and competitive procurement process and had concluded long term contracts, the Constitutional Court ruled that such organization of waste collection does not correspond to the provisions defined in Public Procurement Law and Waste Management Law. According to the Waste Management Law waste collection should have been organized according to the “competition for the market” model either through public tender for the provision of services or choosing a public-private partnership. The municipality could also choose to bypass procurement process, if it would have selected to operate waste collection in-house through its own municipal operator.

4. Riga municipality is the largest municipality in Latvia with a population of 632,6 thousand which represents about one third of country population. Waste created in Riga municipality is about 50% of country's total amount. Planned waste collection concession was based on the institutional public-private-partnership ('PPP') model, where public partner engages as a shareholder and obtains joint control rights in the day-to-day management of the operator. Private partner was chosen through a procurement procedure, in which four existing operators paired in two cooperation partnerships. The requirements of the procurement procedure were restrictive and only one bidder (a partnership of the two largest operators) could effectively fulfil them. In the result the winner established together with Riga municipality a jointly controlled operator, which was granted by the municipality exclusive rights to provide waste collection and management services in the whole territory of Riga for 20 years.

5. The CC advocated against the plans of the PPP. However, Riga municipality started the procedure of selection of private partner and in June 2019 the concession agreement was concluded. The PPP covered waste collection services and infrastructure development.

Ownership of the developed infrastructure would be transferred to the municipality after the expiration of the PPP. The existing “competition in the market”, model, where four operators were active, covered only the services part (waste collection) of the waste management in Riga.

6. In July 2019 the CC initiated a case of the possible breach of the Article 102 of the Treaty on the Functioning of the European Union. Main concerns were:

- envisaged concentration and structural changes in the waste collection market in Riga was significant. From four market participants currently active on the market to one with the exclusive rights to provide waste management services in the following 20 years.
- 20 years was too prolonged to allow the preservation of potential competitive pressure in the future. After such a long period of exclusivity there will be little if none effective potential competitors able to compete in the following tenders after 20 years.
- high risks for contracting agency (municipality) as the buyer of services to become dependent on actions of the private partner in the PPP. That means, for the whole period of concession there with low possibility to substitute a private partner with alternative competitor if it requests an unreasonable price increase, becomes insolvent or exits the market.
- efficiency arguments based on economy of scale used by the Riga municipality might was considered prima facie unfounded taking account of the size of Riga waste collection market.

7. Although, waste collection market exhibits some indications that it is a natural monopoly due to the efficiency gains generated from economies of scale in densely populated areas, some studies show that the efficiencies by economies of scale can be achieved with a significantly smaller population than the total population of Riga (632,6 thousand inhabitants). For example, study in the USA found out that in waste collection market scale economies were exhausted at population of 50,000, while study performed in Italy found that such efficiencies are exhausted at 16,000 inhabitants¹. These arguments show that monopolization of the market may be justifiable on the considerably lower amount of population, in the smaller towns but not in the city with such number of populations like Riga. It is doubtful that a waste management market of such size as Riga, which has so far functioned well under competitive conditions, need to be monopolized for 20 years.

2. Advocacy activities of the CC in the waste management market

8. In 2016 the CC carried out a market study in Latvian household waste management. In the market study the CC found that “competition for the market” model exists in most municipalities of Latvia by using the public procurement procedure mainly selecting only one service provider in particular territory for the period of 5-7 years. It was also recognized that significant part of municipalities proved services in-house, therefore bypassing public procurement procedure.

¹ <https://www.oecd.org/daf/competition/Waste-management-services-2013.pdf> (p.19)

9. The CC in certain cases admitted that in “competition for the market” may ensures better use of resources than “competition in the market” if it does not foreclose the market in the long term. That may be an argument for most of the smaller municipalities with smaller population and lesser density. However, effective competition can be hampered if such model is introduced without evaluation of relevant market conditions and analysis of efficiency arguments.

10. During the 2017 when new Waste Management Plan draft became public the CC in order to minimize the negative impact on competition, objected for restriction planned in Riga waste management market. The CC proposed to consider that Riga should be divided in at least into 2 sections tendered separately. The long PPP 20-year contract term should be significantly shorter. CC also warned municipality against higher risks of collusion that restrictive requirements (partnership of operators, long term, very high entry requirements of previous experience and a turnover, etc.) for the qualification to the tender will motivate companies to use legal and justified (for such large tenders) means of cooperation (partnerships) to qualify for the tender. Riga municipality ignored any suggestions proposed by the CC.

11. In 2018, when the PPP procurement procedure was launched, the CC once again drew attention to the risks of the lack of competition to Riga municipality and the ministry in charge. Contrary to the CC recommendations, in June 2019 public partner Riga municipality and SIA Getliņi EKO (municipality owned operator of the landfill) and the winning private partnership SIA CREB Rīga, which was set up by the two largest waste collection companies already active in Riga, set up a jointly controlled waste management company, which then was granted exclusive rights regarding the implementation of a waste management system in Riga.

3. Enforcement actions of CC

12. On June 14th, 2019, Riga municipality, SIA Getliņi EKO, and SIA CREB Rīga concluded the exclusive PPP concession agreement to introduce a waste management system in Riga. The partners of PPP announced the start of operation from September 15th, 2019. The CC initiated the infringement proceedings according to Article 102 TFEU against the Riga municipality and its company SIA Getliņi EKO by organizing municipal waste management in Riga under conditions that completely eliminate competition. The CC considered that Riga municipality acted not only as a public authority, but also as an undertaking while becoming an active shareholder in the day-to-day operation of the jointly controlled waste management company. The CC stated that this concession agreement affected a significant part of internal market.

13. To ensure effective enforcement the CC adopted a decision imposing interim measures on Riga municipality and SIA Getliņi EKO. The interim measures decision provided several obligations for Riga municipality and SIA Getliņi EKO, including the suspension without delay of the concession agreement in so far as it affects the collection and transportation of separately collected and unsorted household waste in Riga. The interim measures decision only covered services part of the concession (waste collection and transportation) and does not preclude development of the necessary infrastructure.

14. The CC also imposed an obligation on Riga Municipality and SIA Getliņi EKO to submit to the CC a plan ensuring compliance with competition rules on the market of collection and transportation of separately collected and unsorted household waste in Riga. On October 1st, 2019 the Administrative Regional Court upheld the CC decision.

15. The situation with the Riga municipality waste management drew a lot of public criticism and the attention of the Parliament. Currently the Parliament debates on the possibility to change the model of “competition for the market”, which under the present wording of the Waste Management Law must be followed universally. Although “competition for the market” might be justified in smaller municipalities, where population density is sparse, “competition in the market” might be an economically justified alternative in a densely populated municipalities, such as the capital of Latvia.