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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****USING MARKET STUDIES TO TACKLE EMERGING COMPETITION
ISSUES – Contribution from Latvia****- Session IV -**

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

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Emerging competition issues identified in market studies

1. In the past 5 years (2016-2020) the Competition Council of Latvia (the CC) has carried out several market studies which have identified competition issues in numerous markets associated with market structure nature that include distortions of competitive neutrality, growing market concentration, and oligopolistic market structures with a risk for tacit collusion. Also, issues of regulatory nature such as anticompetitive regulation, exclusionary requirements in public tenders were assessed during the market studies.

2. Although the most severe competition law infringements still remain CC priority, it should be noted that the results of the public stakeholder survey conducted by the CC in 2018 show that competition distortions caused by public administrative bodies (for example distortions of competitive neutrality, anticompetitive procurement or regulation) is one of the most important issues of the competition environment in Latvia. This gives reason to believe that advocacy activities also conducted after market studies should be important to stakeholders and regarded as one of the priorities of CC.

1. Distortions of competitive neutrality

Vehicle inspection

3. In 2018 the CC carried out a study in vehicle inspection market where the CC detected, that the state restricts entrance of potential competitors in the vehicle technical inspections market. The state-owned company “Road Traffic Safety Directorate” (Latvian abbreviation - CSDD) had four main functions in the market either being in the role of supervisor and market participant at the same time:

- it advised government on sectoral policy documents;
- to preform vehicle inspection accredited companies conducting technical inspection where CSDD was at the same time a stakeholder;
- carried out quality and compliance control checking if inspection stations are operating in the line with regulations;
- providing vehicle inspection CSDD was a shares holder in companies which already were operating in the market.

4. As a result, various anticompetitive restrictions were imposed by the state and CSDD to protect the CSDD monopoly and created significant competition advantages for the CSDD owned companies, at the same time substantially distorting competition and preventing market development (new entry by potential competitors in practice was impossible). The CC found problems not only related to distortions of competition neutrality, but also of anticompetitive restrictions in regulation forbidding car repair stations and dealers to participate in this vehicle technical inspection market.

5. To eliminate anticompetitive intervention by the state in the market, prevent competition restrictions and negative impact on consumers, the CC proposed market liberalization. The CC received award at the Competition Advocacy Contest 2018-2019, organised by the World Bank Group and the International Competition Network, for the initiative to open the vehicle technical condition control market for free competition. Although the market of vehicle technical inspection services will be opened for potential competitors CSDD will still maintain control over the market and decide on opening on new inspection sites, on requirements for new entrants, although in reality holding monopoly on provision of services for customers. CSDD will procure these services providers through the tenders.

Organisation of cultural events

6. At the beginning of 2020, the CC completed a study in the field of organising cultural events to determine if there is any unfair competition disadvantage between private and public (state and municipality owned) market participants. The CC evaluated whether private and public market participants are provided with equal access to infrastructure, public funding and information on public funding. If compared with private stakeholders public event organisers are in a more favourable market position providing performance of non-profit cultural events aided from public funds and having free access to public infrastructure but at the same time also selling commercial events. In cases public funds were available also private undertakings CC identified barriers for them to access information about planned public funding. The CC concluded that there is no equal level playing field between private and public market participants. CC recommended to public event organisers to ensure that competitive neutrality principles are respected and advised public bodies to provide wider access to public funding and ensure fair and timely access to information about public funds.

2. Restrictions in public procurements

7. The CC has encountered cases when the public procurement regulations restrict the possibilities of fair competition.

Ticket sales

8. In 2020 market study was carried out on organisation of various event ticket sale services within state and municipal institutions and enterprises (state). There are two significant and mutually equal competitors in the ticket sales service sector in Latvia – “Biļešu serviss” Ltd. and “Biļešu paradīze” Ltd., as well as several small market participants. The CC concluded that the ticket sale service in state and municipal institutions and enterprises are mostly being provided by “Biļešu paradīze” Ltd., while the total number of “Biļešu serviss” Ltd. sales outlets are more than three times higher. Smaller market participants focus on online sales that has become more and more popular. Pricing policies in this market may differ – fees may be expressed in the fixed amount or in percentage from price, or in both forms. The market is two-sided market where ticket seller as intermediary provide services to the both – event organisers and for final customers also charging both sides separately. Through market surveillance the CC found that during public procurements when public event organisers is choosing the best offers from ticket sellers amount of ticket sellers service fee applied to consumers usually is not assessed by

procurement organisers. When evaluating the procurement requirements, the CC found that there are significant barriers to entry for small market participants having mostly online sales, for example, minimum requirement of physical ticket sale sites.

Vehicle registration number plates

9. Another market study in 2020 has been completed on state owned company's CSDD procurement on production and supply of road vehicle registration number plates. Registration of road vehicles and distribution of number plates to vehicle owners is a task that is exclusively delegated to CSDD in accordance with the Road Traffic Law and Cabinet Regulation No. 1080. At the same time, the delivery of number plates to CSDD is carried out by market participants, who can compete in procurement with their price and quality. The CC detected requirements in the procurement that substantially restricted competition in the market such as:

- express delivery of individualised number plates in a very short period of time (within 30 minutes, while the vehicle registration service is being delivered) de facto meaning that production should be located in the premises of CSDD or very close;
- the short deadline of 45 days after conclusion of contract when the first number plates need to be delivered to CSDD. That was recognized as insufficiently long time for those who needed to set up new production facilities in Latvia after winning the tender;
- obscure requirement and criteria to develop a system of centralised production and accounting of number plates with a software for receiving and processing data from National Vehicle and Driver Register within 30 days.

10. As a result, only one company participated in the procurement. This company also before the procurement for 14 years delivered number plates to CSDD and had production site in the premises of CSDD. The CC considered that cooperation with one company for such a long time may have influenced CSDD to set inadequately high requirements for the procurement, which, logically, could be fulfilled by only one company. Therefore, the CC advised CSDD to revise the requirements, when organising procurements in the future to ensure that they do not restrict competition.

3. Anticompetitive regulation

11. One of very common issue identified by the CC through market studies in several markets is anticompetitive regulation.

Medicines

12. In 2019 the CC conducted market study on price formation of medicines and alleged competition restrictions that affect financial availability of medicines. During the market study the CC carried out a detailed assessment of differences in the pricing mechanisms for medicines among the Baltic states and their impact on the final price of reimbursable and non-reimbursable medicines. The CC has concluded – even when manufacturers in Latvia set lower prices for medicines than in Lithuania or Estonia, medicines may be more expensive for Latvian consumers due to the existing regulation on

medicines pricing. Therefore, the CC encourages the responsible institutions to develop a new mechanism, which would make reimbursable and non-reimbursable medicines financially more accessible for Latvian consumers.

Insurance

13. In the market study carried out in 2019 the CC found that the extensive regulation and excessive disclosure of financial and performance indicators have made the compulsory civil liability insurance of owners of motor vehicles (MTPLI) market exceedingly transparent. Competitors in the MTPLI market have free access to specific commercial information, which is an uncharacteristic feature of competitive markets and provides benefits and explanation of the MTPLI market trends to the market players rather than the consumers. This allows the insurance companies to keep up with the pursuits of their competitors very easily and raise concerns of parallel behaviour in market.

4. Growing market concentration

Pharmacies

14. In 2017 market study on the regional retail market of medicinal products the CC observed that during previous five years the key pharmacy chains have increased the number of pharmacies owned by them at the expense of individual or smaller pharmacy chains. Therefore, without change in the total number of pharmacies in Latvia, the market concentration has increased significantly, and the consumer choice has become more limited. It was established that the market is dominated by five large chains. The market power of the biggest pharmacy chains has significantly increased in several towns. The CC established that there are several towns in Latvia where one pharmacy chain has 70 – 80%, in certain cases even 100% market share in the local markets of retail of medicines, and therefore they were considered as the areas of competition risk.

15. The CC invited the responsible authorities to assess the possibility to expand the sale of non-prescription medicinal products outside of pharmacies, for example, in retail stores, on the internet or by establishing mobile outlets in rural areas. Such a solution would not only increase the availability of medicinal products, including outside of more populated territories, but would also cause an additional competition pressure on the prices of medicinal products. Also, considering concentration of the retail market, the CC indicated that it would be necessary to implement the procedure that would enable the state to review the events of the changes of owners and thus eliminate concentration of pharmacy chains. The CC called Ministry of Health of Latvia to review a possibility to adopt amendments to the special regulation that would provide to restrict acquisition of pharmacy licences in cases, when the transaction of the acquisition of a pharmacy fails to achieve the criteria for merger notification stipulated by the Competition Law.

Reimbursed medicines

16. In 2018 the CC carried out a market study on distribution of reimbursed medicines. The CC discovered, that there are systemic problems both in the process of distribution and allocation of medicines among pharmacies thus affecting availability of medicines to consumers. The research carried out by the CC leads to a conclusion that market concentration increases in the wholesale of medicines which causes high competition risks due to vertical integration between wholesale and retail level that may foster self-preferencing when deciding sell the medicines to competing retailer and undermine availability of medicines. The conclusions from the market study highlight systemic problems of distribution and allocation of state reimbursed medicines.

Daily consumer goods

17. Food retail in Latvia is a highly concentrated market with two large players - "Rimi" and "Maxima". In recent years, the CC has evaluated several mergers in this sector and observed that Rimi and Maxima are rapidly expanding in the convenience store or small format store segment. The CC is cautious about such a strategy for the development of the large retail store chains; although the choice for consumers is theoretically expanding, it may create a disproportionate competitive advantage for large market participants. In the long run, this may reduce competition in the relevant market, as small shops may decide to exit the market. Currently, the CC has started market study in order to explore the problems described above.

5. Oligopoly market and parallel behaviour

Telecommunications

18. The CC has witnessed a situation in the Latvian telecommunications market where the parallel activities of operators can be linked to an oligopoly market structure – since there are three major players in the market that provide similar services and their prices are publicly available, it is easy for operators to follow the activities of their competitors. Latvian mobile operators before implementing the EU "roam like at home" rules in 2017 publicly announced that prices will increase for tariff plans and were promoting directly the most expensive, i.e. roaming-inclusive tariff plans, thus making it difficult to access information on cheaper services.

19. Considering these similar activities, the CC initiated a market research to investigate whether such action was not in violation of competition law (prohibited agreement). In assessing the circumstances, the CC found that the method, how operators modelled scenarios of commercial strategy and the methods of calculating their prices have been different.

20. Following the CC objection to such practices, mobile operators, that offer local tariffs without roaming services, committed themselves to change their behaviour and make the information on local tariff to be easier accessed. However, this situation does raise the issue of parallel behaviour.

6. Combination of structural and regulatory issues

Waste-management

21. In 2015 the CC launched market study into the waste-management sector to assess competition situation. In 2016 market study was published in which the CC identified a number of existing competition barriers created by both market structure and regulatory framework in the waste-management market in Latvia such as increased municipalities involvement into business, problems with separate waste collection, issues concerning quality of concluded agreements and provided services of waste-management, as well as serious barriers created by regulation that hinder effective competition. Also, actual situation showed that substantial number of municipalities were in-housing waste management services without organizing a tender.

22. Not long after the findings of market study was made public, Riga municipality started to elaborate a new household waste management system in the capital city of Latvia. Municipality intended to introduce a 20-year concession for waste collection with a single concessionaire for the whole territory of Riga what would replace the existing actual waste collection agreements with four separate operators. The CC objected such plans arguing that this will exclude any competition in Riga household waste management market, will significantly narrow the range of potential bidders in tender and possibly will diminish the entrance of potential competitors after the 20-year-period. The CC proposed to consider that Riga should be divided at least into 2 sections tendered separately and the long 20-year contract term should be significantly shorter. The CC also warned municipality against higher risks of collusion because of restrictive requirements for the qualification to the tender that in the result might affect the price and other competitive outcomes.

23. Riga City Council ignored any suggestions proposed by the CC. In 2018, when the Public–Private Partnership (PPP) procurement procedure was launched, the CC once again drew attention to the risks of lack of competition to the municipality and the ministry in charge. Contrary to CC recommendations, in June 2019 concession agreement was concluded.

24. Considering that the Riga City Council did not follow the findings and recommendations developed in the market study, as well as all suggestion from the CC was repeatedly ignored, on July 2019 the CC initiated the infringement proceedings against Riga Municipality and SIA Getliņi EKO regarding the possible abuse of a dominant position set forth in Article 102 of the Treaty on the Functioning of the European Union. The case is currently under investigation. In order to maintain competition on the household waste management market in Riga during the case investigation, the CC adopted the first decision imposing interim measure. On October 2019, the Administrative Regional Court adopted a decision in favour of the CC and left effective the interim measures adopted by the authority. Interim measures are directed to preservation of existing competition structure on the household waste management market in Riga.

7. Available non-enforcement tools

25. Alongside investigation activities a significant role is allocated to a range of promotion events of competition culture and market monitoring to prevent the possibility of infringements in future. There are various non-enforcement tools available to the CC to identify competition issues:

- Market studies are carried out when in-depth research of some specific problem or an industry is required. Market studies are multifactorial research activities that involve comprehensive market analysis, covering market definition, distortions of competition arising from unilateral or joint conduct, regulatory barriers etc.
- Standardized market inquiries involve analysis of market-specific and clearly defined problems. By nature, they are similar to market studies but are less complicated considering the scope of the research.
- Screening methods are relatively simple and quick to use methods, but they require specific and large data set, for example variance screen to detect collusion. Screening allows to quickly and easily notice specific deviations in a large data set, which may indicate competition problems in the industry and indicates a direction where further research is needed.
- Initial researches carried out by the CC before the launch of the official investigation or market study. During this research, the essence of the problem is identified, and the further steps of the process are clarified.

26. In deciding which tool is most appropriate to address competition issues in each situation it is useful keep in mind the goal what needs to be achieved and to consider scope and the magnitude of the problem as well as other factors. Such non-enforcement tools are used to address the competition issues:

- Based on prioritization criteria the CC decides which possible infringements to investigate. But also, possible infringements with minor importance are still subject to authorities' attention using alternative methods that are used when the CC already has reasonable concerns about the conduct of a particular market participants. In these situations, the CC conduct prevention procedures in the form of negotiations with market participants, namely regarding the alleged abuse of market power and potential coordination of prices or other commercial activities. Prevention procedures are part of more wider government memorandum on "Consult at first" principle¹. This tool is used as an alternative to initiate a case. In cases, when the CC finds alleged noncompliance in the activities of dominant undertakings, but these actions do not affect large part of the market, the CC may perform negotiation procedure with the market participant. In the last five years, such procedure has been applied 13 times. Similarly, if the CC finds any signs of possible prohibited agreement, but they do not indicate on severe, repeated and broad harm to competition, the CC may issue warnings to market participants. In such cases the purpose of prevention is to promote understanding of entrepreneurs without imposing a fine to the warned persons. In the last five years, such procedure has been applied 25 times.
- Make non-binding recommendation to market participants (codes of conducts) or offer recommendations to sector regulators or legislators regarding changes in regulatory framework. The CC is a competition policy advisor that ensures improvement and development of the competition policy, regulatory framework

¹ In 2017, the Competition Council of Latvia in collaboration with representatives of more than 20 state supervisory authorities and entrepreneurship organisations signed a cooperation memorandum on implementation of the "Consult at first" principle. The purpose of this principle is to improve cooperation among authorities and entrepreneurs in order to promote fulfilment of the existing requirements in the state and give clear operational conditions, instead of punishing as the primary approach.

and rule of law, as well as provides consultations to the state/local government authorities, market participants and non-governmental organisations regarding the application of regulatory enactments in the area of the competition law.

- Public education activities such as seminars organised by the CC to educate a particular industry or target groups on various competition topics, to promote fair and effective competition and thus possibly to reduce the likelihood of violations of competition rules. Most of seminars serve a purpose to educate the organisers of procurement and public administrative bodies. In holding these seminars, the CC can strengthen the competence and ability to recognise the features of a cartel agreement between the applicants. Taking into account that amendments to the Competition Law to discipline public administrative bodies entered into force on 1 January 2020, in accordance with the principle of public administration “Consult at first” the CC arranged seminars to educate public persons on the new amendments to avoid future violations of law.

27. The competition issues identified in the market studies usually have been addressed by developing recommendations and offering opinions to parties involved. In most cases specific proposals are developed for the responsible ministries, other authorities and legislators to address issues found in market studies. Sometimes specific recommendations are developed for market participants.

8. The overall experience regarding market studies (the key strengths and limitations)

28. Market studies are the most appropriate tool when there is a lot of unknown facts about an industry or market and in-depth and comprehensive research is needed to understand the market in question. Market studies is also a useful tool when the CC receive many similar complaints about the same problem or many different complaints in the same market, which suggest that there may be some wider structural or regulatory problems to address. In such cases, it is more appropriate to start a market study than to address each application separately. Market studies increases the CC's understanding of how markets work, which later can be useful in the investigation of cases or if there is a merger that need to be assessed in these markets.

29. The key strength of market study is that it provides information about competition issues and solutions to industry. Also, ex-post market studies that involve retrospective analysis of particular previously adopted decision allows to assess the present market conditions and how the market works. Usually after the CC have carried out market study, report of this study is published to the general public so that all stakeholders can learn the conclusions of the market study and take part in changing competition environment whether it is Ministry in charge or market participants themselves. If signs of violation of the Competition Law are detected during market study, the CC can initiate a case and investigate. Also, if market study reveals that the successful development of competition in the industry is hampered by laws and regulations, the CC shall develop and submit to the responsible institutions of the industry proposals for the necessary amendments to the laws and regulations in order to improve the competition situation.

30. In general, market studies are a strong platform through which various competitive challenges in industries can be addressed, but it should be borne in mind that qualitative and evidence-based market study may require significant consumption of employee resources and time. Such a small institution as the CC must actively think about the allocation of resources in relation to priority cases and often the amount of resources is not

enough to be able to carry out significant market studies and to be devoted to enforcement activities at the same time.

31. It should also be borne in mind that recommendations coming from market study are non-binding and that the parties involved are not always interested and have no obligation to address potential competition concerns. The CC does not have the right to force changes needed in the market that are identified in market studies if there are no anticompetitive conduct by undertaking. This significantly limits the effectiveness of market studies as a tool to tackle emerging competition issues. There is also a possibility that the CC has thoroughly fought for the regulatory change trying to convince the responsible institutions for need of it, but the initiative may be rejected after long and hard discussions. So, it may be the case that the CC has invested a lot of resources into a market study and after in the fought for change, but in the end the discovered competitive challenges remain intact. Therefore, the CC also take the likelihood of successful result and amount of resources needed into account when deciding if market study is the most fitting tool to tackle competition issues.

32. There are some success stories where market studies have solved competition problems or prevented possible competition issues from emerging. But unfortunately, it must be acknowledged that there are situations where parties involved do not take into account the CC recommendations, for example waste management in Riga. But it must be admitted that in this case market study served as an excellent tool to identify problems in the waste management sector and initiate a case. This case serves as evidence that the recommendations made by the CC in the framework of market studies must be considered and if they are completely ignored the CC, if it is possible, may take more severe path - initiating a case.