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**Case Prioritisation and Prosecutorial Discretion – Note by Latvia**

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## Latvia

### 1. Introduction

1. The Competition Council of the Republic of Latvia (the CC) considers case prioritisation and prosecutorial discretion to be essential elements of effective competition law enforcement, because it requires competition authorities to balance statutory responsibilities with limited institutional resources, particularly in a small jurisdiction such as Latvia. Prioritisation enables the CC to focus on markets and conducts where intervention is likely to give the greatest impact on consumer welfare, market functioning, and the Latvian economy.

2. In this context, the CC will present the Latvian national competition authority's approach to case prioritisation and prosecutorial discretion, the legal framework governing these processes, and the factors considered when setting priorities and deciding on the initiation of the case, as well as challenges on making decisions to reject complaints that do not constitute enforcement priorities.

### 2. Legal framework

3. The CC is an independent public institution responsible for the enforcement of competition law in Latvia.<sup>1</sup> To fulfil the CC's tasks stated in Article 6 (1) of the Competition Law, the CC is entitled to prioritise them.<sup>2</sup>

4. The CC approves the prioritisation strategy and the annual institutional priorities while ensuring public availability thereof.<sup>3</sup> The prioritisation strategy<sup>4</sup> and the annual list of priority areas<sup>5</sup> are formally adopted by the CC. These decisions are based on a combination of statutory tasks, the potential impact of competition infringements on markets, and broader public interest considerations. The strategy explains the general principles guiding prioritisation and resource allocation, while the annual priorities identify sectors, enforcement themes, and institutional objectives considered particularly significant for the relevant period. The strategy is made publicly available in the CC's website to ensure transparency.

5. Additionally, the Advisory Council<sup>6</sup> is authorised to provide opinions and submit proposals concerning the institution's strategic priorities.<sup>7</sup>

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<sup>1</sup> Article 4 (3) of the Competition Law. Available in English: <https://likumi.lv/ta/en/en/id/54890>.

<sup>2</sup> Article 7 (1) point 9 of the Competition Law.

<sup>3</sup> Article 5 (6.<sup>1</sup>) point 3 of the Competition Law.

<sup>4</sup> Available in Latvian: [https://www.kp.gov.lv/sites/kp/files/media\\_file/lietu-prioritizacijas-strategija\\_2023.pdf](https://www.kp.gov.lv/sites/kp/files/media_file/lietu-prioritizacijas-strategija_2023.pdf).

<sup>5</sup> The CC's priorities for 2026 are available here: <https://www.kp.gov.lv/en/article/competition-council-sets-key-priorities-2026>.

<sup>6</sup> Article 6.<sup>1</sup> of the Competition Law.

<sup>7</sup> Article 6.<sup>1</sup> (2) point 3 of the Competition Law.

6. According to Article 22 (1) of the Competition Law the CC initiates a case regarding the violation of the Competition Law only *ex-officio*, considering the priorities, the impact of the potential violation on competition and important public interests.

7. The rights to prioritise cases the CC had even before the implementation of the Directive (EU) 2019/1 (the ECN+ Directive)<sup>8</sup>. I.e., such regulation was included in the Competition Law with the amendments which entered into force on 15 June 2016. From the annotation of the amendments<sup>9</sup>, it follows that the amendments are intended to establish the right of the CC to initiate cases for violations of the law only on its own initiative. The relevant rights would be used in accordance with the priorities set by the institution. The main priorities that the institution will assess when initiating a case will be the most serious violations of the CC (cartels), as well as violations that significantly affect competition or the collective interests of consumers, the most effective use of the financial resources allocated to the institution, and the relevance of the relevant market sector. The established priorities will be made public, to the extent that this does not harm the interests of the investigation of violations, and the opportunity will be provided to interested parties to express their opinion on the planned priorities for the next period. At the same time, the CC, when deciding whether to initiate a case, will also consider the impact of the potential violation on competition and essential public interests.

8. Additionally, to implement the requirements of the ECN+ Directive regarding rejection of complaints, as well as to improve the procedure for examining complaints and ensure a more transparent process of the decision-making regarding a possible violation of competition law, with the amendments in the Competition Law, which entered into force on 1 January 2022, Article 8 (1) point 8 was included in the Competition Law providing that the CC shall adopt a decision on the examination of complaints.

9. Accordingly, this ensures the possibility for the complainant to exercise and protect his rights regarding the full examination of the complaint and to receive a reasoned decision with the right to appeal it in the court.<sup>10</sup> On the other hand, the CC can still prioritise cases and focus on the use of the resources efficiently, preventing and bringing anti-competitive behaviour that distorts competition in the internal market to an end. However, the standard on the substance of these decisions rejecting complaints is still being developed in the practice of Latvian national courts and, since the amendments came into force, there has been only a small number of court cases.

### 3. Factors considered when setting priorities

10. When setting its priorities, the CC considers the following criteria:

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<sup>8</sup> DIRECTIVE (EU) 2019/1 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. Available: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.011.01.0003.01.ENG&toc=OJ:L:2019:011:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.011.01.0003.01.ENG&toc=OJ:L:2019:011:TOC).

<sup>9</sup> Available in Latvian: <https://titania.sacima.lv/LIVS12/SacimaLIVS12.nsf/0/B079BC5404CC6F91C2257E500027E87B?OpenDocument>.

<sup>10</sup> Article 8 (2) of the Competition Law. However, the complainant has no right to ask the CC to initiate an investigation.

- Feedback provided by the cooperation partners (including input from the Advisory Council).
- Submissions and reports received regarding issues in various sectors.
- Priority areas defined in the Government's Action Plan.
- Strategic decisions identified in the previous period that the CC has not yet completed and intends to continue.

11. It is worth noting that Advisory Council consists of state authorities and associations and foundations representing the interests of social and cooperation partners. While public and political pressure can sometimes emerge, especially when high-profile sectors are involved, the structured prioritisation process and legal framework provide a buffer, enabling the CC to remain focused on impactful, evidence-based enforcement.

12. The CC also conducts a self-assessment of its activities, measured against its plan of priorities. Each year, the CC prepares and publishes an Annual Report on its website, which includes an evaluation of the institution's performance indicators. The report analyses planned activities versus those carried out, while also providing a broader overview of CC's operations for the respective years. Within the institution, internal meetings are held every three months, during which a quarterly performance report is presented. At these meetings, representatives of the Executive Body inform the Council about the actual work completed during the previous three-month period and the Council may assess whether the work is being carried out in accordance with the plan and its established priorities. Additionally, at its own discretion, the Council may exercise more frequent oversight and request status updates as it deems necessary.

13. Regular internal reviews ensure that limited resources are allocated effectively and that the enforcement actions remain proportionate and targeted. In a recent case, after processing electronic evidence and determining that the case was unlikely to lead to an infringement decision, the CC deprioritized it and redirected its focus to another case.

#### 4. Factors considered when deciding on the initiation of the case

14. As mentioned before, the prioritisation affects the CC's decisions on which cases to pursue and investigate. Prioritisation guides the CC in strategically allocating its limited resources toward cases with greater economic significance or public interest. Specifically, it affects decisions on whether to initiate proceedings *ex officio* on its own initiative under Article 22 (1) of the Competition Law or how deeply to investigate the matter when deciding whether further inquiry or enforcement action is justified. However, in the case of a complaint, the impact is carefully balanced to respect legal obligations and ensure fundamental rights of the complainant.

15. The prioritisation strategy identifies several core criteria relevant to enforcement prioritisation, and the CC applies a case-by-case approach guided by the following key factors: impact on competition, public interest, preventive effect, feasibility and resources of investigation, number of affected persons, market significance, novelty.

16. The primary criterion is expected impact. The CC seeks to prioritise infringements capable of generating significant harm to competition, consumers, or the economy. Attention is given to sectors affecting a broad range of consumers, essential services, public expenditure, or strategic economic development. Public procurement cartels have therefore consistently remained among the CC's highest enforcement priorities. Bid-rigging infringements directly affect public spending, taxpayer resources, and trust in procurement

systems. The CC has accordingly devoted significant resources to cartel detection, cooperation with public contracting authorities, and the development of cartel screening tools.

17. The CC also prioritises markets of high social and economic significance, including food retail, healthcare, financial services, waste management, energy, and digital markets. These sectors have repeatedly appeared in the CC's annual priorities due to their importance for consumers and the national economy.

18. Another important criterion is deterrence and preventive effect. The CC assesses whether enforcement action is likely to create broader compliance incentives across sectors or market participants. In some situations, preventive tools, consultations, or warnings may produce more effective outcomes than lengthy infringement proceedings.

19. Resource allocation and feasibility considerations also play an important role. The CC assesses the complexity of the matter, the availability of evidence, the likelihood of establishing an infringement, the expected duration of the investigation, and whether the anticipated enforcement benefits justify the use of institutional resources.

20. The CC therefore does not necessarily prioritise all technically identifiable infringements. For example, where a matter has limited market impact, insufficient evidence, low deterrent value, or where more effective remedies are available through other mechanisms, the CC may decide not to pursue formal proceedings.

21. Therefore, the CC applies a combination of strategic, qualitative, and quantitative considerations when prioritizing cases. Quantitative indicators may include market size, turnover, estimated harm, concentration levels, number of affected consumers, or public procurement value. Qualitative considerations may include strategic importance, innovation concerns, legal novelty, systemic risks, or broader policy implications.

## 5. Decision on rejecting a complaint

22. The complaints submitted to the CC are not rejected outright, but rather carefully assessed against legal and procedural thresholds, as well as prioritization criteria to determine whether they warrant the opening of a formal infringement case.

23. In practice, the CC conducts an initial assessment of incoming complaints and information reports. This may involve requests for additional information, internal legal and economic assessment, consideration of available evidence, and evaluation of the likely enforcement impact.

24. When the CC concludes that the matter should not be pursued further, and the complaint is rejected, the CC issues a formal, well-reasoned decision. This decision outlines the factual and legal basis for the rejection, ensuring transparency and accountability. The complainant is notified of this decision and retains the right to challenge it by appealing to the court. However, these decisions are not being published.

25. Latvian administrative courts play an important accountability function in the CC's discretion on rejecting the complaints. The courts recognise that the CC enjoys discretion in setting priorities and allocating resources, however they review whether the authority has exercised that discretion lawfully, proportionately, and consistently with administrative law principles.

26. One of the most recent examples is the case of *Liepājas autobusu parks*<sup>11</sup>, where the CC had rejected a complaint under Article 8 (1) point 8 of the Competition Law, and the complainant challenged that decision. The Administrative Regional Court confirmed the complainant's right to receive a reasoned response, meaning that the CC must explain its decision clearly and based on facts and legal considerations. However, the Administrative Regional Court also acknowledged that, according to the ECN+ Directive, national competition authorities have the right to set their own enforcement priorities, and that this discretion is an important guarantee of their institutional independence. In this specific case, the Administrative Regional Court reviewed (1) the legal framework of the potential infringement; (2) the content of the complaint and CC's response; (3) the CC's assessment, including additional information it had gathered. Ultimately, the court found no error in how the CC exercised its discretion in rejecting the complaint.

27. In *Kurzemes vārds*<sup>12</sup> case the addressee challenged a decision by the CC, which had declined to open an investigation into the actions of the Ministry of Transport and the Ministry of Culture. The applicant argued that the state's compensation mechanism for delivering printed media - designed to support *Latvijas Pasts* as the universal postal service provider - created unequal competitive conditions for private sector press distributors. It claimed this violated the neutrality obligations under Article 14.<sup>1</sup> of the Competition Law.

28. The CC acknowledged the concerns but concluded that the state aid and regulatory framework in question was established directly by law, particularly under the Postal Law and related Cabinet regulations. Therefore, the CC determined it was not within its competence to intervene in regulatory decisions made by other public authorities or to initiate a case where the conduct in question was a direct result of legal obligations.

29. The applicant requested the court to declare the CC's refusal to initiate a case unlawful and to require the CC to start an investigation. The Administrative Regional Court rejected the claim, confirming that:

- The CC has discretion to decide whether to initiate proceedings, based on enforcement priorities and the legal context.
- No violation of procedural or substantive duties was identified in how the CC assessed the complaint.
- Since the conduct stemmed from legally mandated provisions, Article 14.<sup>1</sup> of the Competition Law was not applicable in this case.

30. Accordingly, the court upheld the CC's position and dismissed the complaint.

31. In *Gren Rīga*<sup>13</sup> case the addressee challenged the decision of the CC not to initiate an infringement case against *Latvenargo* for a possible abuse of dominant position under Article 13 (1) point 4 of the Competition Law.

32. The CC had previously conducted a market monitoring exercise based on concerns submitted by several market players, including *Gren Rīga*, but ultimately decided not to open a formal case. It argued that the submitted information did not indicate sufficient evidence of a systemic infringement that would merit enforcement action. The CC also

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<sup>11</sup> Judgement of the Regional Administrative Court of 28 August 2024, case A43003223, *Liepājas autobusu parks*.

<sup>12</sup> Judgement of the Regional Administrative Court of 12 February 2025, case A43002524, *Kurzemes vārds*.

<sup>13</sup> Judgement of Regional Administrative Court of 12 February 2025, case A43003224, *Gren Rīga*.

referenced that it would assess relevant conduct over a four-year period under existing legal obligations imposed on *Latvenergo*.

33. However, the Administrative Regional Court ruled in favour of *Gren Rīga*, finding that the CC's response lacked sufficient reasoning and did not adequately evaluate the factual and economic information submitted, particularly the pricing behaviour and data outlined in the economic study presented by the complainant. The court concluded that the CC had failed to explain the criteria used for evaluating the complaint and had provided a substantively insufficient justification for its inaction. The CC appealed the court's decision to the Supreme Court, but it refused to initiate court proceedings, concluding that there is no doubt about the legality of the judgement of Administrative Regional Court. It could be added that the Supreme Court did not find grounds to initiate the case, as the CC essentially disagreed with the Administrative Regional Court's assessment of the factual circumstances, which does not fall within the Supreme Court's competence.<sup>14</sup> In any case, the court did not impose an obligation to revise the response or to initiate proceedings.

## 6. Conclusions

34. The Latvian legal framework and case prioritisation by the CC combines relatively broad institutional discretion with procedural safeguards to ensure transparency, accountability, and effective judicial review. This approach is structured and transparent, based in legislation, publicly available prioritisation strategies, annual institutional priorities, and reasoned decisions on complaints.

35. The CC's prioritisation model is based on publicly available strategic documents, annual institutional priorities, and case-by-case assessments. In practice, prioritisation involves a combination of qualitative and quantitative considerations, including expected impact on competition and consumers, public interest, deterrence value, feasibility of investigation, resource allocation, market significance, and legal or economic novelty.

36. It has evolved over the recent years and more recently following the implementation of the ECN+ Directive. While even before the Competition Law provided the CC with discretion in initiating and conducting investigations, the implementation of the ECN+ Directive further clarified the CC's ability to reject complaints that do not constitute enforcement priorities, at the same time ensuring accountability and transparency. However, according to national case law and Latvian administrative law principles, the CC's discretion is not unlimited. Decisions to reject complaints must remain lawful, objectively justified, and subject to judicial review. The recent case law of Latvian administrative courts illustrates the importance of maintaining an appropriate balance between institutional discretion and effective accountability.

37. Looking forward, it seems that competition authorities are facing growing evidentiary complexity, digitalisation of markets, expanding regulatory mandates, and rising expectations regarding effective enforcement. In this context, transparent and well-reasoned prioritisation frameworks will remain essential for ensuring that competition authorities can allocate resources effectively while ensuring and preserving effective competition law enforcement.

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<sup>14</sup> Judgement of the Supreme Court of 10 March 2026, case SKA-156/2026, *Gren Rīga*.