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COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

**Assessing and Communicating the Benefits of Competition Interventions – Note by
Latvia**

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This document reproduces a written contribution from Latvia submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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Latvia

1. The Competition Council of the Republic of Latvia (the CC) reports on its activities through its' website and social media such as Twitter, LinkedIn and Facebook daily, and when necessary, through media or interpersonal communication with main target groups or stakeholders.
2. The CC makes available to the public the full text of decisions, writes short press releases on them, and prepares visual materials such as infographics, posters, video. Also, the CC issues opinions on competition environment and reports on court proceedings and published the final decision of the Court on the Authority website.
3. There is a statutory requirement (set in the Competition Law) for the CC to submit an activity report of the previous year to the Parliament (Saeima) and the Cabinet of Ministers of the Republic of Latvia every year by March 1 and to publish it in its website¹.
4. Before publishing it, the CC presents and discusses the Annual report to the Consultative Council of the Competition Council, which was established after amendments to the Competition Law in 2023² with an aim to promote cooperation with its strategic partners (ministries, local governments, and business associations) as an independent institution, as well as to develop closer and more effective cooperation in the development and application of competition policy. The members of the Consultative Council of the Competition Council are representatives of the Ministry of Economy, the Ministry of Finance, the Ministry of Environmental Protection and Regional Development, the Ministry of Transport, the Ministry of Agriculture, the Union of Latvian Municipalities, the Confederation of Latvian Employers, the Latvian Chamber of Commerce and Industry and the Council of Foreign Investors in Latvia.
5. The Annual Report consists of following sections: 1) basic information about the institution, such as legal status of the institution, 2) the policy areas, sectors, sub-sectors of functions for which the authority is responsible, for example, prohibited agreements, abuse of dominance, mergers, monitoring of unfair trading practices, competition neutrality, sector inquiry, litigation, 3) the financial resources and performance of the institution, 4) staff, 5) communication with the public and stakeholders, 6) priorities and events planned for the next year.
6. In addition to Annual Report, the CC once in a quarter prepares a Report to the Ministry of Economics, which is responsible of the economic development in the country, about main achieved goals and completed tasks during the reporting period. This information also contains information about public benefit of the actions of the CC.
7. Amongst other information, the Annual Report and Report to the Ministry also includes information about public benefit assessment. It is a simple way to reflect the impact of the decisions taken by the CC on society. Also, the public benefit assessment is a great way to determine the effectiveness of the use of budget funds allocated for financing the activities of the CC. For this reason, another figure is presented alongside the total public benefit – the ratio of public benefit to the CC's budget. The public benefit is calculated each year separately, but it is presented as a three-year average figure in order to reduce the variability in estimates resulting from the different number and volume of

¹ Annual Report of the CC 2022: <https://www.kp.gov.lv/en/media/10936/download?attachment>

² <https://www.kp.gov.lv/lv/jaunums/izveidota-konkurences-padomes-konsultativa-padome>

infringements detected each year, as well as to equalize the impact in particularly large or small markets.

8. To increase awareness of the benefits of competition the CC prepares easy to read expert articles that are shared through mass media, prepares press releases³, podcasts on public benefit⁴, infographics on other materials.

1. Used methodology to calculate the public benefit

9. The CC has developed its own methodology to calculate the public benefit that is mainly based on recommendations⁵ by the Organisation for Economic Co-operation and Development (OECD), adapted to the specific features of the Latvian economy and supplemented by the recommendations of the European Commission and the practical findings of other competition authorities of the Member States of the European Union. The public benefit is rather quantitative assessment. Only the direct price impact of the CC interventions is determined as there is no clear guidance on how to quantify the deterrence effect and dynamic non-price effects such as innovation, quality, choice, and productivity.

10. The public benefit assessment is formed by three main blocks – merger control, prohibited agreements and abuse of dominance cases. When specific information collected in investigation process is available, that allows calculation to specific case be more precise, this information is used to assess the likely benefits. However, in most cases such information is not available, then following default assumptions are used:

	Merger control	Prohibited agreements	Abuse of dominance ⁶
Affected turnover ⁷	Turnover of all companies in the affected market(s) in the previous year	Turnover of the companies under investigation in the affected market(s) in the previous year or the sum of public procurement(s) under investigation	Turnover of the companies under investigation in the affected market(s) in the previous year
Avoided price increase	3%	10%	5%
Expected duration of the price effect	2 years	1 year	2 years

Note: The benefit of future years is discounted using social discount rate 5%.

11. In addition, the soft enforcement activities of the CC are also considered, if it is possible to quantify their benefits. These include:

- the preventive effect of the conducted negotiation procedures and issued warnings by the CC;

³ <https://www.kp.gov.lv/en/article/work-cc-creates-public-benefit-almost-27-times-higher-budget-institution>

⁴ https://soundcloud.com/user-257897224-255730817/podkasts-par-konkurenci-9-sabiedribas-ieguvums?si=e24055eb38ee4a2cb5c6277d5cbce3dc&utm_source=clipboard&utm_medium=text&utm_campaign=social_sharing

⁵ <https://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>

⁶ This category includes violations of Section 13. in III Chapter of Competition Law and Prohibition of Unfair Trading Practices Law.

⁷ If annual turnover data in the affected market is not available, then net annual turnover data of the companies under investigation is used.

- the positive effect of market monitoring studies by the CC (on an ad hoc basis);
- the positive effect from the violations of Section 14.¹ un 14.² found by the CC (on an ad hoc basis)⁸;
- the positive effect of the changes proposed by the CC in regulatory acts (on an ad hoc basis).

12. The impact of soft enforcement is not discounted and the avoided price increase in these cases are calculated using symbolic rate of 0.5%. However, in practice only some of the issued warnings are included in the public benefit assessment as for other categories it is hard or even impossible to properly quantify the positive or preventative effect.

13. The methodology to assess the public benefit was established in 2016. As mentioned above, the CC mostly relayed upon OECD methodology published in 2014 but there are some deviations. For example, expected duration of the price effect are determined based on the CC past experience in the field of violation assessment and the best international practice. To establish methodology to assess the public benefit the CC carried out a retrospective analysis of previously established competition law violations, taking into account the causes of violations, as well as the peculiarities of the development and structure of the Latvian economy. The economic motivation of market participants to continue participating in violations was analysed, evaluating the potential benefits to be obtained against existing risks, including in the context of the leniency program implemented by the CC.

14. Over the time there have been some minor updates to the methodology. The newest version was developed in in the beginning of 2023, and it will affect calculation starting this year. The most significant changes were made in merger block. In previous version to estimate the affected turnover in merger block the CC used to include only the turnover of parties involved but the 2023 version will include total turnover of all companies in the affected market following the recommendations of OECD and example of the European Commission and other competition authorities in the European Union. Previously used avoided price increase rate for mergers was 2% but from now on the CC decided to use 3% price increase rate that was recommend by OECD and is the lower bound price increase rate used by European Commission.

15. Also, in addition to all mergers that were blocked and approved with remedies, as of this year the calculation will include phase II abandonments if there is no evidence the merger was withdrawn for other, clearly identifiable reasons than the potential competition concerns raised by the CC. If there is no such evidence, it is assumed that the CC's investigation has likely avoided a price increase. This novelty is included taking an example from the European Commission practise.

16. The CC have performed some ex-post evaluations in past but due to limited resources these exercises are performed rarely. The last ex-post evaluation was performed in 2018 to analyse post-merger effect in industrial wheat and rye flour production market⁹. Limited resources and capacity are the main reasons why the CC haven't done many ex-post evaluations or wider impact assessments of competition on the economy. In the next Strategy period, there is a plan to conduct an ex-post evaluation of some of the CC decisions, however, this will largely depend on available resources.

⁸ See Competition Law Section 14.1 Obligation to Ensure Free and Fair Competition and Section 14.2 Liability for the Violation of the Rules for Free and Fair Competition

⁹ https://www.kp.gov.lv/sites/kp/files/kp_old/oldfiles/38/citi%2Fpecapvien_izvert.pdf

2. Communication of benefits of competition interventions

17. One of the most effective tools for preventing competition violations is a strict penalty policy, thus, communication on sanctions have important role to deter companies from violations of competition law.

18. But at the same time, clear and comprehensive communication on benefits of fair competition also can serve as a preventive tool in the prevention of violations positively motivating to introduce compliance culture in business environment. Understanding the negative consequences of violations of the Competition Law and the benefits of fair and responsible behaviour is vitally important for entrepreneurs to comply with the law. In this regard, entrepreneurs could be more motivated to avoid possible violations of competition law and could be more interested in receiving consultations, as well as participating in the Leniency Program.

19. Thus, one of the main priorities of the CC that is also set in the institutions mid-term Strategy is promoting awareness of free and fair competition among market players and public authorities and shaping competition policy and culture at national and international level.¹⁰

20. The main target audience of the CC is entrepreneurs and public administrative bodies. Besides entrepreneurs the public administrative bodies are set as one of the main target audiences because the CC are obliged to observe the principle of competitive neutrality since 2020. The secondary target audience is future entrepreneurs, future competition law practitioners and future policy makers, therefore, to promote fair competition the CC is fostering competition culture in younger audiences – pupils and students.

21. However, for entrepreneurs to understand the benefits of fair and free competition and also to act in good faith, the CC needs communication interventions not only in its direct target audience and secondary audience, but also for the stakeholders. Thus, the CC prepares communication interventions at the level of business communities (entrepreneurs' representing NGO's), at the level of organizations or in cooperation with other state administrative institutions, which can help with the education of market participants, and at the policy level, keeping up with changes in regulatory acts and encouraging their compliance with the principles of fair competition.

22. Used communication strategies varies across different stakeholders. For example, to increase awareness of competition law amongst entrepreneurs and public administrative bodies the most effective communication strategy is to use mass communication via mass media and social media (interviews in media, articles and publications in newspapers, visual content such as videos, infographics in social media and Authorities webpage etc.). But with an aim to increase competition law compliance (not only inform and raise awareness, but also “call to action”) in addition to mass communication it is important to use interpersonal communication (meetings with entrepreneurs, consultations, seminars, webinars, e-mail/ phone communication).

23. For example, in 2022, the CC issued 103 press releases on competition law topicalities. In total, the CC has been mentioned in the media 1,572 times. Social networks such as Facebook, Twitter and LinkedIn had a total of 140-170 publications each in 2022.

¹⁰ Mid-term Strategy of the CC (2020-2022): <https://www.kp.gov.lv/lv/media/1265/download?attachment>

To increase awareness of fair competition, the CC creates video, podcasts¹¹ and posters/infographics. Regards interpersonal communication the CC organized 36 educational events promoting fair competition and held 45 meetings with businesses and NGOs to discuss competition developments and challenges in different sectors and to promote fair competition principles.

24. To foster competition in secondary audience – pupils and students – the CC organizes various events such as educates future competition law professionals and students from universities by giving lectures, also the CC organizes a creative video contest for pupils "Is There A Place for Competition?!"¹², also organizes a Research paper contest in competition law for Law students¹³.

25. Regards main stakeholders - entrepreneurs' representing NGO's, other organizations or state administrative institutions and policy makers the CC often uses interpersonal communication to foster competition culture. The CC for entrepreneurs' representing NGOs often organizes meetings, discussions about novelties in the industry, planned changes in the regulatory framework etc. Also, the CC actively organizes seminars and conferences in cooperation with NGOs to educate market participants. With NGO's it is less often to communication through mass media.

26. The similar approach is used for stakeholders from other government institutions who daily work with entrepreneurs and can help fostering fair competition environment. For example, in 2022, the CC provided seminars for public procurement, thus strengthening the competences of this target group and their ability to identify signs of cartel agreements between bidders. Among others, the CC educated procurement professionals in cooperation with the Procurement Monitoring Bureau, the Procurement Academy, the Economic Crimes Combating Directorate of the Main Criminal Police Directorate of the State Police, etc.

27. In 2022, not only procurement authorities but also cooperation authorities were trained to identify cartels and help the CC to prevent collusion. Cooperation activities took place with the Economic Crimes Combating Directorate of the Main Criminal Police Directorate of the State Police, the European Public Prosecutor's Office, the Corruption Prevention and Combating Bureau, the Financial Intelligence Service, the Central Financial Contracts Agency, etc.

28. Also, the Authority consults policy makers giving opinions on laws, regulations and other decisions and actions of national or local governments to ensure that regulations does not restrict the development of free and fair competition. The opinions of the Authority are made public.

29. In 2022, the CC issued 49 opinions to legislators in more than eight economic sectors to address potential restrictions to competition that could be facilitated by regulatory frameworks. In 2022, views were also expressed on the compatibility of draft laws with the principles of free competition and distortions of competition in areas such as waste management, health, passenger transport, trade, public procurement, pharmaceuticals, insurance, education, electricity, and others. To promote the adoption of pro-competitive regulatory framework, representatives of the CC defended the principles of fair competition at 55 events, including the Cabinet of Ministers, the Parliament, etc. 25% of all measures

¹¹ <https://www.kp.gov.lv/lv/podkasts-par-konkurenci>

¹² <https://www.kp.gov.lv/en/video-contest-should-there-be-competition-2022>

¹³ <https://www.kp.gov.lv/lv/research-paper-contest-competition-law-20212022>

taken to prevent restrictions on competition by public administrative bodies took account of the CC's views.

30. In all target groups and main stakeholder groups communication tools has changed considering remote work and digitalization of the work environment. Digital solutions are used more in everyday communication - remote meetings, online events, also, the CC invests to create a more accessible and easier-to-use digital environment, for example, the CC has developed social media communication (Facebook, Twitter, LinkedIn), creates social media content such as short videos on importance of competition, improves website accessibility and prepares automated self-assessment tools with the aim to comply with the competition law. To evaluate if the CC efforts of promoting a fair competition environment have been and are effective, the CC every two years carries out a Public Opinion Poll towards the implementation of competition policy in Latvia.¹⁴ The 2022 opinion poll shows that public perceptions of competition law have improved, including a better understanding of what constitutes a competition law infringement and what activities are prohibited. Three quarters of respondents also consider that the authority's decisions have a positive impact on the market, highlighting the clarity of the legal basis for decisions and the positive impact of decisions on the market.

¹⁴ <https://www.kp.gov.lv/en/article/every-tenth-entrepreneur-and-municipality-are-ready-engage-competition-law-violation>