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Working Party No. 3 on Co-operation and Enforcement

INVESTIGATIONS OF CONSUMMATED AND NON-NOTIFIABLE MERGERS

-- Latvia --

25 February 2014

This note is submitted by Latvia to the Working Party No. 3 of the Competition Committee FOR DISCUSSION under Item III at its forthcoming meeting to be held on 25 February 2014.

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1. Pre-merger notification regime

Are mergers that meet specific size and geographic nexus thresholds subject to mandatory notification provisions in your jurisdiction? If so, is there a mandatory period following the notification during which the parties are prohibited from consummating the merger? (Please note: detailed descriptions of merger notification provisions are not necessary for purposes of this roundtable, which focuses on the situations below.)

1. The Latvian Competition Law (CL) provides a mandatory merger notification system upon reaching the prescribed turnover and/or market share thresholds. The undertakings are not prohibited from consummating the merger while the review takes place, however, they themselves bear the risk of consummating merger that upon the finalisation of review is deemed to be contrary to effective competition by the Latvian Competition Council (CC; national competition authority).

2. Review of mergers falling below notification thresholds

For a merger that does not meet the notification thresholds or is otherwise exempt from the notification requirement, does your agency have authority under your merger review provisions to review the merger? If so, what remedies are available, and do they differ from remedies available in a notifiable transaction? Does your agency have authority to review such mergers under some other provision of your competition law, and if so, what remedies are available?

2. The CL does not provide the CC with powers to review mergers that do not reach the notification thresholds. Currently, amendments to the CL have been proposed that could authorise the CC to review such mergers within twelve months after acquisition of control where concerns of significant impediment to competition exist.

If your agency decides to challenge a consummated merger that was not subject to mandatory notification provisions, what remedies can your agency seek? Have you had success with remedies in these situations? Please provide examples.

3. In the light of the proposed amendments to the CL that will vest the CC with the authority to review consummated mergers, it is not intended to have a different approach towards the scope of applicable remedies compared to review of notifiable mergers.

Are there differences in practice or procedure for the investigation or challenge of a consummated or non-notifiable transaction?

4. In the light of the proposed amendments to the CL that will vest the CC with the authority to review consummated mergers, it is not intended to prescribe or apply different standard of procedure since the CC will have the ability to request the undertakings to submit the merger notification and proceed in the same way as with notifiable mergers.

3. Review of mergers that should have been notified but were not

If the parties fail to notify a merger that was subject to mandatory notification provisions, are they subject to penalties? In such a case, does your agency retain the power to review the merger under merger review or other competition law provisions? Is there a time limit on when the agency can bring an enforcement action?

5. The undertakings may be penalised for failing to notify a merger and are not exempted from the duty to file a merger notification. The CC would review such mergers under the general merger review procedure. There are no time limits for the CC to bring the action for failure to notify a merger or to review it.

If an anticompetitive merger should have been notified, but was not, and it has already been consummated, what remedies can your agency seek? Have you had success with remedies in these situations? Please provide examples.

6. Although the CL does not mention any specific types of remedies that are available to the CC under different types of infringements, the CC may apply any remedies that it deems appropriate to restore competition if an anticompetitive merger has been consummated. Both behavioural and structural remedies may be applied. It has not been necessary for the CC to apply any remedies in investigating non-reported anticompetitive mergers yet.

4. Subsequent review of previously cleared and consummated mergers

If your agency decides after investigation not to challenge a merger, or has approved a merger with remedies, but later concludes that the merger in fact was anticompetitive, can the agency still challenge the merger, either (1) under your merger review law, either by reopening the original investigation or by starting a new one, or (2) under some other provision of your competition laws? What remedies are available then? Is there a time limit on when such a post-merger review can take place? Please provide examples.

7. The CL does not provide the CC with explicit powers of subsequent review of cleared and consummated mergers. General conditions for annulment of decisions are provided in administrative law that also affect powers of the CC for subsequent review in time. In practice, the CC has not started a new investigation or reopened it, but rather the CC may include a condition in the decision that allows it to review the particular merger upon a predetermined date.

8. One of the most recent cases where such condition had been included was acquisition of *AS Latvijas Neatkarīgā Televīzija* by *MTG Broadcasting AB* (11.05.2012. decision No.42 *MTG/LNT*). The CC imposed a duty on MTG to submit information (that resembles merger notification) after five years and explicitly retained its powers to request sale of assets if it deems necessary to ensure effective competition on the markets.