

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 3 on Co-operation and Enforcement****Roundtable on challenges and co-ordination of leniency programmes - Note by
Latvia****5 June 2018**

This document reproduces a written contribution from Latvia submitted for Item 3 at the 127th Meeting of the Working Party No 3 on Co-operation and Enforcement on 5 June 2018.

More documentation related to this discussion can be found at

www.oecd.org/daf/competition/challenges-and-coordination-of-leniency-programmes.htm

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JT03432150

Latvia

1. Development amendment of leniency program in Latvia.

1. Historically first provisions to motivate those undertakings involved in infringements to report the relevant information and evidences of infringement by their own initiative in Latvia competition legislation was introduced in 1998 including provisions allowing the undertaking to get significant reduction in fines (from 75% to 100%) being the first that reports about infringement with additional conditions fulfilled (applicant is not initiator of infringement and interrupted participation in in the infringement), also reductions from 50% to 75% - undertaking being the first that reports significant additional evidences after CCL started investigation, and reduction from 10% to 50% if undertaking were the next one and applied for reduction. These provisions were not applied in practice but these provisions were not cartel specific and covered all infringements - cartels, vertical agreements, also abuse of dominance.

2. With later amendments in 2004 leniency provisions were specifically attributed to cartel infringements, also revised and amended in 2008 and 2013 to meet the requirements of the ECN (European Competition Network) Model Leniency Program aimed to remove discrepancies between the existing leniency programmes in EU.

3. Although leniency program specifically designed for cartel infringements in competition legislation were in force from 2004 and was constantly improved and updated to reach effective implementation of this program anyway the program faced significant challenges. First leniency application Competition Council of Latvia (CCL) received in 2013 that was also application for full immunity and enabled CCL to start new cartel investigation. Till now there were two more full immunity applications (one was received in the beginning of 2015 and case ended in 2017 with infringement decision¹) and 9 leniency application for the reduction of fines during investigation conducted by CCL.

4. Till 2016 provisions defining the Latvia national leniency program framework, procedure and conditions were regulated at secondary legislation adopted by government (Cabinet of Ministers) that regulated procedure for setting fines for competition law infringements². Meanwhile Competition Law of Latvia contained only delegation to government (Cabinet of Ministers) to set up provisions and procedure for application fine (also for reduction of fines).

5. Thus, to improve effectiveness of leniency program it was decided to transfer core elements of leniency program to Competition Law with some improvements. In June 2016, new Competition law amendments came into force that included also leniency package. Important that *Leniency Plus program* was introduced, empowering CCL to reduce a fine (up to 50%) at the cartel cases already investigated by CCL if the cartel

¹ [Press release](#), 26.04.2017.

² “Procedures for the Determination of Fines for the Violations Provided for in Section 11, Paragraph one and Section 13 of the Competition Law”

participant provides evidence about separate cartel infringement. *Leniency Plus* applicant is obligated to meet the same requirements as in the ordinary leniency applications.

6. Public Procurement Law of Latvia contains prohibition for cartel participants to participate in the bids for 1 year after final ruling of court that upholds CCL decision become in force. Law also contains exclusion from this sanction for cartel participants that used the leniency program to obtained full or partial immunity from fines.

7. Due to transposition of the EU Damages directive 2014/104/EU additional restrictions and derogations were introduced in national competition legislation concerning leniency applications. New amendments came into force in November 2017. These amendments contain provisions to limit access to leniency applications (statements) for litigants and restrictions to the extent leniency applicant is jointly and severally liable.

2. Other challenges and steps taken to raise awareness.

8. One of the priorities of CCL over the years is rising awareness through organization of seminars, participation in discussion, meeting with sectoral NGO's also aiming to deter and educating about inadmissibility of cartel infringements, CCL case practice and fining policy, and about the benefits of leniency program. The CCL has an interest in maximizing the incentives for companies to come forward and self-report of prohibited agreement offences avoiding significant penalties and limitation to participate in public procurements.

9. Anyway, the results of Public opinion survey in 2016 "On the issues of the competition policy and its implementation" (POS) that CC conducts every 2 years and is aimed to gather comprehensive feedback from different stakeholders (entrepreneurs, sector associations, legal offices and local governments) showed that level of awareness about leniency is were low. Despite very intensive educational activities of CCL carried out in 2015 and 2016 it was discouraging to reveal that 76% of surveyed entrepreneurs (mostly SME) in Latvia replied that they are not aware of leniency program.

10. Due to this CCL changed form of education activities to reach more effectively particular audience (SME). CCL arranged joint educational activities in cooperation with the Corruption Prevention and Combating Bureau and the Procurement Monitoring Bureau. Regional seminars in different cities for both entrepreneurs and procurement specialists of public and municipal authorities started from at the March 2017. Till now seminars "*On Fair Entrepreneurship*" already covered 5 different Latvian cities in 2017 and 2018. There is plan to cover 6 cities in 2018.

11. To facilitate awareness of entrepreneurs about inadmissibility of the infringement participating in public bids especially where EU funds are used in 2017 CCL took part in 5 regional seminars organized by Central Finance and Contracting Agency that ensures administration of EU funds.

12. Also, explanatory guidelines and soft law are important complementary tools for rising awareness and trust. First step to think about leniency application and to start consulting with authority could be the most tough for company management. To ease and foster that leniency procedure explanatory guidelines was intended to introduce as a tool to make procedure and conditions fully clear and ease entrepreneurs or his advisers to decide to apply for leniency. CCL started to work on guidelines at the end of 2016 and

published Leniency guidelines in March 2018.³ Leniency guidelines explains in more detailed and comprehensive manner the applicant's rights and duties, how the sequence number is assigned, CCL procedure to qualify for full immunity or a fine reduction. These guidelines provide information for leniency applicants about the possibilities to contact CCL unanimously (also by phone) without any consequences or obligations. Also, in the guidelines companies can find short summary of the current practice of CC in relation to the application of leniency program.

1. ³ [Leniency guidelines \(in Latvian\), press release \(in English\)](#).