

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 3 on Co-operation and Enforcement****The standard of review by courts in competition cases – Note by Latvia****4 June 2019**

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More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/standard-of-review-by-courts-in-competition-cases.htm>

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Latvia

1. Legal framework and standard of review

1.1. Public enforcement regime in Latvia

1. Latvia is a jurisdiction of an administrative competition enforcement system. Public enforcement of the competition law is carried out by the Competition Council of Latvia ('CC'), consisting of an executive body and a decision-making body – the council. Although CC is a governmental institution established within the institutional structure of the Ministry of Economics, when taking decisions the CC is functionally independent. Responsibility for the investigation rests with the executive body, which analyses cases, drafts reports of gathered information and evidence, drafts CC decisions, as well as opinions on regulatory and legislative proposals. All relevant decisions the council takes by majority voting.

2. According to the Competition Law¹ ('CL') the CC monitors abuse of dominant position, prohibited agreements and carries out merger control. The decision to formally open an investigation is taken by the council based on a report of relevant information drafted by the executive body. According to the Article 22 (1) of CL the council has full discretion when deciding, how to proceed with the presented information. Infringement cases the CC can start on its own initiative, considering the priorities, the impact of the alleged infringement on competition and significance to public interests. Any person or entity is entitled to provide information to the CC regarding possible infringement, however the CC has discretion regarding initiation of the case based on the received information.

3. Once an investigation is opened, the parties will be informed about the investigation, unless confidentiality of the investigation warrants otherwise. In most prohibited agreement cases parties are informed during dawn raid or by sending a request for an interview. Only in few cases the party can be informed of the investigation when sending statement of objections.

4. Regarding the length of investigation, the CL envisages a decision within six months, although the council can extend the investigation period to a total of two years. During the investigation information is gathered in dawn raids, by sending requests of information and within co-operation with other governmental institutions and law enforcement agencies. Although the investigatory process is conducted autonomously by the executive body, the progress of investigation is reported back to the council every three to five months.

5. When gathered evidence is sufficient to prove an infringement of the CL, case team drafts statement of objections and presents it to the council. If based on it, the council decides to take case forward, statement of objections will be sent to the parties. According to the Article 26 (7) of CL, the parties have 20 days to reply. The parties can also request an oral hearing to present their written observations before the council. Afterwards the case team prepares draft decision and presents it to the council. According to the Article 8 (1) and Article 27.² of CL upon closing the investigation the council can adopt one of several

¹ Competition Law. Available here in English: <https://likumi.lv/ta/en/en/id/54890-competition-law>

decisions: (i) to find an infringement, impose fine and / or legal obligations; (ii) to terminate the investigation of the case; (iii) to adopt a commitment decision (in abuse of dominant position cases). Upon taking the decision, the CC can fine only market participants (undertakings), by thus imposing administrative fine and / or administrative legal obligations. The CC cannot attribute liability to individuals.

6. The CC has wide discretionary power when closing an investigation. Therefore, instead of adopting a decision, in alternative the CC can conclude the investigation by entering into a administrative contract (agreement or settlement) with an undertaking. Such contract can be concluded regardless of the type of infringement and replaces the final decision. For court's review of administrative contract please see text further below.

7. Article 27.³ of the CL states that the CC has the power to conclude an administrative contract to settle and resolve legal dispute. Power to concluded administrative contracts is also laid down in Administrative procedure law² ('APL'). As the contract is only stating the essence of the infringement³, when considering whether the case is suitable for an administrative contract the CC will explore the facts and complexity of the case and possible new concepts arising from the case. The CC will consider the agreement if undertaking accepts facts of the case, acknowledges the infringement and its liability for it and accepts legal obligations and a fine imposed by the CC. The amount of the fine can be reduced by 10 % or more due to the fact that agreement is concluded in place of the decision. Steps for setting a fine and its reduction is not reflected in the contract, it shows only the final amount of the fine.

8. Although the CL does not explicitly describe possibility to apply settlement procedure, general rules of the CC's power to conclude administrative contracts also allows the CC to apply settlement procedure, similar to European Commission's procedure. In case of a settlement, the CC adopt a formal decision. Settlement procedure allows to settle cartel cases by ensuring that existence of the infringement is not challenged in the court. No formal guidelines are in place for this procedure, however settlement rules and conditions are based on the practice of the CC. To this day settlement procedure has been applied only after the statement of objections was sent to an undertaking and in cases were undertaking has fully acknowledged its part in the infringement and liability for it, accepted the facts and the evidence presented by the CC, agreed to the legal assessment of the mentioned facts and evidence and agreed not to appeal the decision regarding the facts, concluded evidence and legal assessment. In return, the CC offers 10 % reduction of the fine it will impose with the decision. If accepted by the council, undertaking's settlement submission is included in the infringement decision.

9. Settlement procedure has been applied since 2014. However, with such conditions undertaking only agrees to the existence of infringement and its liability for it, but not the amount of the fine. Therefore, undertakings still can in part challenge the CC's decision in

² Available in English: <https://likumi.lv/ta/en/en/id/55567-administrative-procedure-law>. According to Article 63.¹ of the APL (not available in English version) the public institution may, at any stage of the administrative proceedings, conclude an administrative contract with private person in accordance with the procedures specified in the State Administration Structure Law. The conclusion of an administrative agreement may be initiated by both the institution and the individual.

³ Usually contract reflects only the breached article of the CL (type of infringement) and in one to two paragraphs states the content of the infringement.

See example in Latvian: https://www.kp.gov.lv/files/lemumu_pielikumi/Rcvi01xYlX.pdf

court, which majority of undertakings in settlement cases have done. To address this situation, the CC recently has changed the draft of the settlement submission and allowing undertakings to express their view on the maximum amount of fine. If the fine imposed by the decision does not exceed the maximum amount noted by the undertaking in its submission, undertaking may not challenge the CC's decision before the court in its entirety.

1.2. Decisions and acts subject to courts review

10. Subject to court's review are:

- infringement decision finding abuse of dominant position, restricted agreement or illegal merger;
- decision allowing, allowing with remedies or restricting merger;
- procedural infringement decision⁴.

11. The CC's has discretion to consider priorities, the impact of the potential infringement on competition and its significance to public interests when initiating or closing the proceedings. Therefore, the CC has wide discretionary power when deciding on the most suitable outcome for infringement investigation. This process is not subject to the court's review, neither the court can examine the CC's decision on deciding on one or another outcome. As follows, decisions to open or close the investigation are not subject to the court's review.

12. Regarding merger control, all the CC's decisions are subject to court's review. However, grounds for appealing a positive merger decision are higher in comparison to cases where a negative decision was adopted. When a merger is cleared with remedies or prohibited the possible infringement of persons rights and legal interests is more evident. Whereas in cases where merger is cleared, possible infringement of one's rights or legal interests usually will be less apparent. In a recent case⁵, the court stated that decision to allow a merger cannot be appealed by third persons just because the market situation has changed. Undertakings do not have a subjective right to a certain market situation favorable to them. However, in certain situations the basis for the appeal could be the infringement of the rights of ownership or the principle of legal equality, e.g. a market participant may point to a significant negative effect of the cleared merger on its legitimate position in the market and its ability to continue to conduct its business due to cleared excessive market concentration.

13. Complaints of the CC's actions during dawn raids can be subject to substantive court review on specific grounds. Article 9 (4) and 9 (5) of the CL stipulates legal basis for dawn raids carried out by the CC. Subject to them and prior to a dawn raid, the CC is required to obtain a judicial warrant from a judge in Riga city Vidzeme district court. The court warrant defines the scope of the dawn raid. Undertaking can challenge the legality of dawn raid either by challenging the legality of judicial warrant or by challenging the actions

⁴ According to Article 9.4 of the CL liability with separate decision can be applied for a failure to provide information, provision of false information, failure to fulfil lawful requests made by the CC and breaking of a seal.

⁵ Judgement in case No SKA-1327/2008 of the Supreme court on December 17, 2018, *Rimi*, ¶15-16. Available in Latvian: <http://at.gov.lv/downloadlawfile/5680>

of the CC's officials, falling out of the scope of the judicial warrant. If an undertaking wishes to challenge the judicial warrant, undertaking can appeal it to the presiding judge of the Riga city Vidzeme district court. Decision of the presiding judge is final⁶. If an undertaking wishes to challenge the actions of the CC's officials, e.g. by stating that actions were not according to the scope set by the judicial warrant, complaint cannot be submitted independently. All alleged unlawful actions related to the investigation process are subject to court's review when reviewing the final decision.

14. However, if actions of the CC's officials are final against the person that was subject to a dawn raid, e.g. dawn raid was conducted on the premises of a person which is not subject to the investigation process, such actions can be challenged before the court if person can prove an infringement of its rights and legal interests. Currently, in Administrative regional court there is a case, where an individual has challenged actions of the CC's officials during the dawn raid conducted on the premises of an undertaking. Individual, who is also an undertaking's chairman, stated that by inspecting his work computer during the dawn raid his rights to respect of his private life were infringed when computer files that also included files regarding his private life were copied during the process of making data image copy of the computer. The case is still ongoing in court in the first instance.

15. The same approach would be applied to any procedural act of the CC – requests for information, requests for interview, etc. If the procedural act is final against the person to whom its addressed, person can challenge this act in the court. If the procedural act is addressed to the person subject to investigation, this person will be able to raise its objections before the court together with the final decision. However, there hasn't been such a case before were a person would have tried to appeal received request for information or request for interview. The statement of objections is not subject to court's review. Statement of objections is a summary of the facts and evidence of the case and their legal assessment drafted by the CC's executive body. Such document does not infringe the rights or legal interests of the undertaking which is a precondition for submitting a complaint in court.

16. Commitment decisions usually are not subject to the court's review. According to Article 27.² of the CL if an undertaking commits itself in writing to fulfil certain legal obligations that mitigates or eliminates competition concerns, the CC, having evaluated the actual and legal circumstances of the case and due to rationality considerations, may take a decision to close the investigation in the case and to impose proposed legal obligations. As commitments are provided on undertaking's own initiative, which results in closing of the investigation, the undertaking subject to commitment decision cannot challenge this decision in court. However, commitment decision could be appealed in court by third persons, if they can prove possible infringement of their rights and legal interests due to adopted commitments. In this situation the court's review of commitments would be the same as for the decision. Although there hasn't been such a case before.

17. According to the law administrative contracts cannot be appealed in the same way as decisions. An administrative contract is a voluntary, mutual agreement between the CC and an undertaking. By its nature it's a private law contract with public law elements. According to the private law the basis of every contract is the intent of the parties to enter into the contract. Such intent must be real and genuine, originating from parties' own free

⁶ If the judicial warrant is canceled, all evidence gathered during the dawn raid is invalid and must be returned to the undertaking or destroyed.

will, without fraud or duress. Therefore, administrative contract can only be appealed if proven otherwise. In course of the review court would only examine the conditions in which the contract was concluded, not the content of the contract. As the same legal basis is applied to settlement procedure, settlement itself cannot be challenged before the court based on the same grounds as a fining decision.

1.3. Standard of court's review

18. The CC decisions can be appealed in administrative courts in two instances. The first instance is the appellate Administrative regional court. The second (cassation) instance is the Supreme court. In both instances court performs review of legality of the decision. The same review standard is applied for questions of fact and questions of law. The standard of the review is the same regardless of the type of the decision or content of the actions.

19. The grounds for challenging the CC's decision are objections to the decision's legality. The decision can be appealed on the grounds of procedural and substantive matters. E.g. in 2017 the CC adopted a decision in infringement case⁷ finding a prohibited vertical agreement (RPM) between construction material producers and their biggest retailers, as well as a hub-and-spoke cartel between the retailers and the producers. Both producers and one of the retailers settled the case, by concluding an administrative agreement with the CC, whereas the rest of the retailers challenged the CC's decision in the court. Arguments of the parties included procedural objections, e.g. the violation of the rights of defense by not giving full access to the file or by not ensuring thorough investigation of the facts, as well as substantive objections, e.g. absence of the agreement, the length of the infringement, the existence of a single and continuous infringement, the amount of the fine, the method of setting the fine and other aspects. Litigation is still ongoing in the court of first instance.

20. In the first instance the court has full jurisdiction to reviews legality and validity of the decision adopted within the scope of the CC discretionary powers. In order to determine the relevant facts of the case within the limits of the complaint and achieve legal and fair adjudication, the court can review evidence of the case, hears witnesses, give instructions and recommendations to the parties of the case, as well as collect evidence on its own initiative (principle of court's objective investigation). Notably in recent years the court has taken a direction of granting complainants requests to hear witnesses. This is happening more and more in cases of restricted agreements, especially by hearing employees of an undertaking as witnesses. Alarmingly, questions addressed to witnesses include questions of their subjective views and not questions of facts⁸.

21. The principle of the court's objective investigation imposes legal obligation to the court to determine actual circumstances of the case and objective truth *ex officio*. However, the scope of the court's review primarily should be determined by the objections set out in the complaint. The undertaking cannot ask the court to review the decision without the reasons for the unlawfulness, merely stating in general that the decision is unlawful.

⁷ The CC decision No E02-17, *Knauf cartel case*, August 31, 2017. Press release here: <https://www.kp.gov.lv/en/posts/the-cc-imposes-a-fine-to-construction-materials-producers-and-retailers-for-a-long-term-price-fixing-783>;

⁸ Rarely are asked questions, e.g. if an email was received or a meeting happened and was attended by certain persons, more and more are asked questions of how the content of an email was perceived, whether existed an agreement or was an agreement *de facto* fulfilled.

Therefore, the court is not obliged to extend the basis of the complaint or to examine legality of the decision outside the scope of objections raised before the court. At the same time, within the limits of the undertaking's objections, the court itself (*ex officio*) objectively determines the circumstances of the case, even by establishing new facts, and provides an assessment of the legality of the decision.

22. In 2017 the Administrative court of first instance wanted to change the scope of the review for decisions of the CC. Therefore, the court submitted a complaint to the Constitution Court⁹. According to Article 253 (6) of APL if an administrative act is annulled or declared invalid, if warranted by the facts of the case, the court instructs the institution to adopt a new administrative act. When deciding to issue a new administrative act, the institution shall take into account the facts and legal considerations established in the court's judgment. Quoted legal norm is usually applied when the court adjudicates the legality of the calculated fine. However, Article 253 (3) of APL states that in cases provided for by the law a court may amend an administrative act itself and determine the specific content thereof. In complaint to the Constitutional Court the administrative court of first instance pointed out that pursuant to the Article 253 (3) of APL the court may amend or determine concrete content of an administrative act instead of an institution only if such competence has been envisaged for it in legal norms. However, neither the CL, nor any other applicable legal acts directly provide for the right of the Administrative court to amend the decisions adopted by the CC. The court held that the contested norm restricted the jurisdiction of the Administrative court and hindered the judicial review from ensuring person's right to a fair trial. However, the court's complaint was rejected¹⁰. Notably, the Constitution court stressed that regulation pursuant to which the court only annuls or deems invalid an administrative act unfavorable to a person is more appropriate for the nature of the administrative procedure instead of a procedure where the court itself instead of the institution amends an administrative act and determines the specific content thereof. E.g., autonomously from the discretionary power of the CC prescribed in the law, to set the fine for the infringement found by the CC. Likewise, the right to a fair trial does not require that the court, in reviewing the legality of an administrative act unfavorable to a person, should always make considerations of expediency itself and, on the basis of these, determine a new content for the fining decision.

23. Such division of state power between the executive and judicial branch can be considered as advantage of the Latvian judicial review system in competition cases. This allows the CC to set policy and enforcement objectives within the discretion foreseen by the law. This also allows the courts to concentrate on the review of the legality of the decisions and not take over the job of a policy maker. As Latvia does not have specialized competition courts, CC's decisions are reviewed by judges qualified to review all administrative acts adopted by state and municipal institutions. As competition cases are rarely about application of precise and prescribed rules and regulations, and more about

⁹ According to Article 104 (2) of the APL if the court acknowledges that a norm of law does not conform to the Constitution (*Satversme*) or norms (acts) of international law, it shall suspend court proceedings in the matter and send a substantiated application to the Constitutional Court. After the coming into force of the decision or judgment of the Constitutional Court, the court proceedings in the matter shall be renewed the following court proceedings shall be based upon the view of the Constitutional Court.

¹⁰ Press release of the Constitutional Court: <http://www.satv.tiesa.gov.lv/en/press-release/the-norm-which-allows-a-court-to-amend-an-administrative-act-and-to-determine-the-specific-content-thereof-only-in-cases-provided-for-in-law-is-compatible-with-the-satversme/>

open general concepts (e.g. tax code versus only two articles on prohibited agreements and abuse of dominance), in a system with no courts specialized in competition matters, courts' review of legality and validity of the CC's decisions may provide an efficient outcome and strike a balance between objectives of the effective competition enforcement and full respect for the right to a fair trial.

24. The judgement of the first instance can be appealed in the Supreme court only if the lower court has misapplied the substantive law or procedural law or, in adjudicating the matter, has exceeded the limits of its jurisdiction. Therefore, the Supreme court normally (unless evaluation of evidence is vitiated by manifest errors) does not examine the evidence and does not review the findings of the lower court on the facts of the case. Cassation instance only examines whether the lower court has violated certain legal provisions or exceeded the limits of its jurisdiction.

25. Case law has recognized CC's margin of appreciation on finding an infringement to full extent. Apart from the failed submission by the Administrative court to the Supreme court in 2017, aimed at granting more power to overturn CC's fines and calculate fines by the courts autonomously, case law has recognized high margin of appreciation when imposing fines.

26. The review of economic evidence is not subject to a different standard as to the facts and evidence in the case. The court has the power to examine economic assessments in full and may rule on the legality and validity of the selected economic methodology and whether economic assessment is vitiated by manifest errors. The court is precluded to substitute CC's economic assessment by its own.

1.4. Duration of court's review

27. When reviewing the CC's decision or actions, the average duration of a court case depends on the instance. In the Administrative regional court, the average duration for court proceedings is year and a half depending on an undertaking's raised objections and requests to the court. In cases where undertaking submits several procedural requests, e.g. request to court hearing¹¹, requests for witness testimony or request for an explanation of an expert, the duration can extend up to four years. Time allocated to drafting of the final court ruling is up to three months¹². Where an undertaking submits a complaint to the court without requesting a court hearing, the case can be reviewed in less than a year. In the Supreme

¹¹ According to Article 112.¹ of the APL (not translated in English version):

(1) The court review of the case shall take place in written procedure without court hearing, unless otherwise provided by law.

(2) If it's more suitable to review the case by setting a court hearing due to considerations of expediency, the court may, at its own discretion, change the type of the procedure.

(4) The court shall hear the case by organizing a court hearing if the applicant, a third person or the legal entity referred to Article 29 of the APL, as well as the respondent – private person in cases of public contracts have requested it in court of first instance.

¹² According to Article 243 (2) of the APL (not translated in English in available version) (2) The court shall draw up a judgment within 21 days. If the court finds, at the time of the judgment, that a longer term is required for a judgment, it shall set a different date for the judgment within the next two months. In competition cases the court almost always sets the maximum term for drafting the judgement.

court due to the current caseload the duration of litigation can be up to two years or more. As of today, the CC is still waiting on final rulings in the case that was received in the Supreme court for the first time at the end of 2016.

28. On average four years are spent on one case in court proceedings. The duration can be extended if the court decides to submit an application to the Constitution Court or request a preliminary ruling of the European Court of Justice. If the Supreme court rejects the findings of the lower court, the case is sent back to the first instance for a repeated review. The judgement of the Administrative regional court again can be appealed in the Supreme court. Although rarely, the Supreme court can reject the findings of the lower court even for the second time. Thus, one case can move forth and back between instances for several times, which significantly extends the duration of litigation. As of today, the decision adopted on April 2, 2013 is for a review in the Supreme court for the second time, although the duration was extended due to the Supreme court's request for a preliminary ruling from the European Court of Justice, when the case was in the Supreme court the first time.

2. Court's access to competition expertise

2.1. Courts expertise

29. In Latvia the Judicial Training Center chair by representatives of academia and the Ministry of Justice is providing continuous education for judges and court employees. However, trainings in competition matters are not common due to small number of judges in Latvia specializing in competition law. Most trainings are led by judges themselves or national attorneys specializing in competition matters, the CC's officials have been invited only few times during the past years due to insufficient resources that could be directed to such trainings. Judicial Training Center also organizes seminars in cooperation with other institutions by inviting international lecturers. As example, last year in cooperation with Academy of European Law a training in essential EU competition law was organized as a part of large-scale project to provide training to national judges on EU competition law on behalf of the European Commission.

30. Depending on funds available to courts themselves, its likely that judges are attending some international trainings or working groups within their own network regarding competition law. In the CC's views most training of judges in competition law matters is done individually, by researching the relevant case law and legal literature. However, judges of administrative court sometimes lack in-depth knowledge of competition law specifics, especially in the court of first instance due to the caseload and necessary competence in various sectors of administrative law¹³.

31. The CC doesn't organize trainings to judges, its involvement mostly comes from very explicit and detailed written observations as well as lengthy explanations during court

¹³ The jurisdiction of the administrative courts is wide. Administrative courts are reviewing cases of competition law, environmental law, medical law, public procurement law, consumer protection law, construction and planning of territory, cases on citizenship, migration and asylum, social insurance, construction and planning of territory, civil service and military service and other cases involving acts and actions of public institutions. In all instances of administrative courts judges are specializing in three to four types of cases according to internally introduced case type specialization. Due to amount of cases, tax law is not categorized as specialty and all judges are reviewing said cases. Cases with no specialization are distributed between all judges in the court.

hearings of the relevant case matters. In addition, every year CC organizes legal forum, bringing together CC's officials and national lawyers to speak about relevant competition law matters and newest approaches when applying competition law. In recent years the CC has also reached out to the courts, inviting judges to attend.

32. Overall complexity of competition cases has grown over the past five years, specifically due to new concepts introduced by the CC in its decisions. In correlation more decisions have been rejected by the court of first instance disagreeing with the CC's views on interpretation of competition law. Most of rejected decisions are before the review in the Supreme court. However, as the court of first instance rarely reviews economic assessment, in most cases the CC's decision was rejected due to different views on the already settled standard of proof of infringements restricting competition by object and effect.

33. In April 12, 2016 the Supreme court rejected the courts of first instance judgment stating that the CC should apply principles laid down in European Commission's guidelines on fines. This view again was repeated in the Supreme court's judgement of September 14, 2016¹⁴. The Supreme court stressed that based on principle of procedural autonomy member state can apply means of liability under the national law including the fine and the amount thereof. Therefore, even if the national law envisages basis for calculating fine as undertaking's net turnover rather than the relevant sales as stated in European Commission's fining guidelines, method established by the national law should prevail.

34. On another occasion the court of first instance rejected the CC's decision on part where the CC had applied joint and severed liability to a parent company. The court of first instance ruled that the text of the CL does not *expressis verbis* foresee joint and several liability. Although in decision the joint and several liability was stipulated as part of the concept of an undertaking, in the courts view such considerations of the CC were not enough for imposing a fine. Court's objections were raised despite established case law of the Supreme court, which previously had stated that the meaning of an undertaking includes joint and several liability of a parent company. The judgement of first instance was rejected by the Supreme court on May 17, 2018¹⁵. The Supreme court noted that Article 1(9) of the CL defines the meaning of an undertaking. In turn Article 12 of the CL states that liability for restricted agreements is attributed to undertakings. Finally, Article 8 of the CL states that decisions of the CL are binding to undertakings. Therefore, the subject of liability in competition law is an undertaking and the purpose of competition law is to make the economic entity, regardless of its legal forms, liable for actions infringing competition law.

2.2. Expert advice

35. In administrative courts, during court proceedings the court has a right to request an expert – examination. According to Article 178 of the APL the court shall order expert-examination in a matter in all cases where special knowledge in science, engineering, art or other sectors is necessary for the determining of facts of significance to the matter. Where necessary, a court shall order more than one expert-examination. An expert in field of economics could also be invited although an independent expert, not familiar with the

¹⁴ Judgement in case No SKA-461/2016 of the Supreme court on September 14, 2016, *Latvijas gāze*. Available in Latvian: <http://at.gov.lv/downloadlawfile/5621>

¹⁵ Judgement in case No SKA-517/2018 of the Supreme court on May 17, 2018, *Moller and others*. Available in Latvian: <http://at.gov.lv/downloadlawfile/5520>

facts of the case, has never been invited during court proceedings for an expert-examination. Usually, an undertaking for purposes of an economical assessment introduces an expert early on during proceedings in the CC and later asks the court to hear their expert as undertakings representative during court proceedings. Anyone can request for expert-examination, however court has discretion to decide on relevance of such request.

36. Court system in Latvia is divided in two branches – first being courts of general jurisdiction adjudicating on civil and criminal matters and second being administrative court adjudicating on matters involving actions of public institutions. In addition, separate court – Constitutional Court, adjudicates on matters involving compliance of law with the Constitution.

37. According to Article 20 of CL concurrently with CC, a court may also determine an infringement of CL. Cases on infringement of competition law under CL or European Union law and compensation for damages shall be examined by the Riga city Latgale district court. Although CL lists unfair competition as one of infringements of competition law, since 2009 due to lack of resources this task has been moved to competence of general jurisdiction court. Secondly, due to prioritization strategy the CC can refuse investigation although a violation of third persons rights and legal interests exists. Therefore, in alternative persons can submit a claim to general jurisdiction court.

38. To submit a claim in general jurisdiction court, an individual or legal person must prove breach of its civil rights, e.g. unlawful provision of contracted agreement or actions by an undertaking (unfair competition or abuse of dominant position) causing damages or other burdensome legal obligations to a person submitting the claim. As unlawfulness can also generate from competition infringement, for purposes of determining breach of civil rights, general jurisdiction court can conclude competition law infringement. However, throughout such proceedings the general jurisdiction court can only conclude an infringement without applying fine for it. In general jurisdiction court the claim is submitted to the court based in district where persons address is registered. 9 district courts in total are throughout territory of Latvia. For purposes of effectiveness and due to necessity for basic knowledge of competition law when adjudicating in cases involving competition infringements, only one court – Riga city Latgale district court has jurisdiction to examine claims constituting possible breaches of competition law. However, according to Article 24 of Civil procedure law Latgale district court has specific jurisdiction in cases on possible infringements of competition law with expectation of unfair competition. Therefore, cases of unfair competition can be heard in any of general jurisdiction district courts.

39. Claims of possible breaches are rarely submitted in general jurisdiction courts¹⁶. However, the courts usually will turn to the CC for an expert opinion. The CC's opinion in the case can also be requested by a party of the case, by submitting the request to the court and allowing the court to decide on request's relevance or by asking the CC directly for a written review and later submitting it to the court. However, the court still has discretion to

¹⁶ Damages claims for infringements of competition law concluded by the CC are yet to gain recognition. Until today only few persons have attempted to submit such claim. Even more rarely are submitted damages claims without prior the CC's decision in place. At the end of the last year, after ten years of litigation in general jurisdiction courts, the Supreme court awarded damages in amount of 1.35 million euro to claimant (PKL Flote) who had suffered from actions by an undertaking in dominant position. Damages claim was raised in general jurisdiction court without prior the CC's decision. However, during the court proceedings the CC did conclude an abuse of dominant position in undertakings action that may have attributed to the general jurisdiction court's judgements in favor of the claimant.

decide if submitted expert opinion is of relevance in the case and should be introduced to the case file. In the opinion the CC only indicates the applicable legal norms and guidelines on applicability of said norms in the context of relevant facts of the case. Therefore, determining an infringement is still attributed to the court, which must do so by determining the facts, examining all evidence and giving its legal assessment. However, whereas the CC will examine the possible infringement by conducting detailed investigation, the civil procedure in general jurisdiction court is based on the adversarial principle. Therefore, contrary to the CC's approach, the general jurisdiction court will only examine the facts and evidence presented by parties of the case.

40. Both administrative and general jurisdiction courts may also on points of law ask for the opinion of the European Commission within the cooperation framework of *amicus curia*, although national courts only on few occasions have made use of such expert advice.