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Competition Compliance Programmes – Note by Latvia

8 June 2021

This document reproduces a written contribution from Latvia submitted for Item 1 of the 133rd OECD Working Party 3 meeting on 8 June 2021.

More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-compliance-programmes.htm>.

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Latvia

1. Competition Compliance Programme in Latvia

1. The Competition Compliance Programme aims to increase the knowledge of the company's employees about competition law and thus protect the company from the implementation of possible infringements. Ensuring compliance with competition law applies to all sectors, to all market participants, at all levels of business.

2. Competition Compliance Programme – a preventive tool for the prevention of infringements

2. According to the decisions adopted by the Competition Council and the results of the public opinion poll, the most significant distortion of the competition environment in Latvia is cartels, especially bid-rigging in public procurement. The most recent data from 2018 shows that every tenth surveyed company would be ready to participate in a prohibited agreement. Therefore, the Competition Compliance Programme developed by the Competition Council is a tool to prevent the risk of a company violating competition law, especially the widespread prohibited agreements.

3. The applied penalty for members of a cartel is significant damage to reputation, and also significant financial loss. They each may be subject to a fine of up to 10% of the net turnover of the undertaking in the latest financial year and a ban for one year on participation in public procurements. In order to prevent these losses, companies have the opportunity to identify risks and ensure the increase of employees' competence in competition law issues through the Competition Compliance Programme so that the Competition Law is not violated and the company does not come to the attention of the Competition Council.

4. The risk for companies to face infringements of competition law depends on various factors, such as the size of the company specifics of work and cooperation partners. Accordingly, the precautionary steps required may be completely different – for larger companies it may be more of a complex strategy; for small ones – short and concise. Regardless of the volume's main thing is to fulfil the program's task – not only to promote but also to maintain in the long run employees' understanding of the possible risks of violations and bring to life the desired actions in the face of them.

3. In order to implement an effective competition law policy in a company, it is essential to:

- identify the company's main risks (potential infringement risks may be specific to each company but are often indicated by past infringements by companies in the represented industry. The risk of infringements is also increased by the low level of competition in the market, close cooperation with competitors and their cooperation partners, and the narrow market when employees change from one competing company to another. For instance, the company's participation in association meetings – training of a company's representative is required);

- identify the company's representatives with the highest level of risk and provide training for them (procurement and marketing specialists, employees who regularly communicate with competitors, plan the company's development or pricing strategy, organize participation in public procurements or prepare the necessary documents for procurement, including estimation);
- identify high-risk activities in the company that should be reviewed (frequent communication with competitors, such as industry associations, various activities, as well as joint procurements, marketing or any other permitted forms of cooperation increase the risk of collision, therefore protection mechanisms need to be improved – informative training or more formal solutions – written commitment);
- develop an action plan for a possible infringement case (effective reporting and action mechanisms, designate who is responsible for the Competition Compliance Programme in the company and to whom employees can turn in case of a doubt).

4. Program – relief after a violation

5. For companies that have been fined and banned by the Competition Council from participating in public procurements for participating in the cartel, the Competition Compliance Programme will not serve as a lifeline from the penalty. However, by fulfilling specific requirements, a company can receive Competition Council's positive opinion and restore its lost credibility after infringement. In its turn, after Competition Council's positive opinion, the procuring entity may decide whether to allow the company to participate in the procurements organized by it. Restoration of credibility is provided for in [Article 43 of the Public Procurement Law](#). Fines imposed directly on undertakings that have participated in big-rigging (the most common infringement of competition law) may not be a sufficient deterrent to the infringement. For a significant part of companies, participation in public procurements forms their most significant share of revenue, and it is the prohibition to participate in further procurement that may significantly affect the market participants refusal to engage in the infringement. Restoring allegiance and taking future actions to prevent distortions of competition have a positive role in strengthening the competitive environment.

5. In order to restore credibility, the penalized company must take a number of steps:

- cooperate with the Competition Council during the investigation and after the decision has been made;
- the fine imposed by the Competition Council must be paid into the state budget, and the damage caused by infringement must be compensated, if the victims of the infringement have claimed it;
- develop a **Competition Compliance Programme**, guidelines and appoint a person in the company responsible for the implementation and regular updating of it;
- systematically educate employees about competition law;
- submit to the Competition Council a confirmation regarding the implementation of the said activities and await the Competition Council's statement.

5.1. Case study

6. In 2018, the Competition Council established illegal, multiple coordination of activities between office equipment maintenance and delivery companies SIA “Tomega” and SIA “Btk.lv”. Tomega has been fined 33,268 euros for deliberately distorting competition in public procurements.

7. After establishing the violation and receiving a fine, SIA “Tomega” cooperated with the Competition Council and concluded a settlement, thus acknowledging the facts obtained by the institution and its involvement in the detected infringement. As a result, the institution reduced the fine imposed on the company.

8. The Competition Council also received a letter from SIA “Tomega” requesting an opinion on whether the measures taken by the company are sufficient to restore credibility and prevent the same or similar cases in the future. SIA “Tomega” developed guidelines for Competition Compliance Programme and took measures in the company to ensure the education of employees about competition law issues, including by appointing a person responsible for compliance with competition law. Following the company's initiative to develop a Competition Compliance Programme and other activities, the Competition Council acknowledged that the company had restored its credibility by taking appropriate technical, organizational and personnel management measures to prevent the recurrence of similar cases in the future. Thus, when further evaluating the tenderers, the public procurement organizer has access to information on the measures implemented by the company to restore credibility and decide on the company's participation in the procurement, despite the ban for years.

6. Advocacy initiatives to promote compliance

9. In order to raise awareness of competition policy and legal issues and stimulate interest in promoting fair and effective competition, the Competition Council organizes seminars for entrepreneurs and their associations, public administrative bodies, lawyers and other interest groups on competition law and its practical application. The seminars are led by the employees of the Competition Council – experienced competition law specialists.

10. In seminars, the Competition Council invites entrepreneurs and their representative associations to promptly develop the Competition Compliance Programme, not only in cases where a company has already been caught in an infringement. It is an effective tool for protecting oneself from irregularities, as it is a self-created document to which both the responsible person and specific systematic actions are taken to prevent undesirable activity.

11. The Competition Council promotes compliance with competition law not only through the Competition Compliance Programme, but also indirectly raises the issue in other ways. In 2020, the Competition Council prepared a self-assessment tool for entrepreneurs, so that they could verify in an easy manner, whether they have not engaged in a prohibited agreement with competitors or so-called cartels due to their negligence or lack of knowledge.

12. In a situation where, after using the self-assessment tool, the owner of a company has concerns about their actions or the company's employees, it offers the opportunity to contact the Competition Council anonymously or apply for the Leniency Program. Also, by performing the test and identifying the cartel risks that the company faces on a daily basis, the company has already done some of the homework required to implement the Compliance Programme.

13. The self-assessment tool for mitigation of cartel risks is available both in printed format to be distributed to entrepreneurs in seminars and electronically: <https://ej.uz/parbaudiuznemumu>.

14. In addition, the Competition Council promotes the observation of competition law informally, for example, through the strategic and educational role game “Cartel”, in which participants can play the role of honest and dishonest entrepreneurs, simulating cartel negotiations, understand the consequences of cartels – increased procurement, exclusion of negatively affected market participants. The aim of the game is to educate about the cartels of competitors in an attractive way. At the end of it, participants are informed about both the Leniency programme and the opportunity for entrepreneurs to develop a Compliance Programme in time to avoid being on the list of offenders.

15. The Competition Council's experts also educate entrepreneurs in the institution's podcast “Podcast about competition” about the application of the competition law practice and topicalities.