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Optimal Design, Organisation and Powers of Competition Authorities – Note by Latvia

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This document reproduces a written contribution from Latvia submitted for Item 2 of the 138th meeting of Working Party 3 on 4 December 2023.

More documents related to this discussion can be found at
www.oecd.org/competition/optimal-design-organisation-and-powers-of-competition-authorities.htm.

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1. In order for the competition authorities to be able to effectively fulfil their assigned duties - to protect free and fair competition in all markets - they must develop and improve the regulatory framework, which often does not keep up with rapid market changes, for example, related to the development of the digital market, develop skills and competences of their employees, technical capacity in digitalization era. This should include short term steps, but it is very important to set up also strategic approach for future. It is especially challenging for the small competition authorities such as the Competition Council of Latvia (CC). Some of the major recent challenges that affects the efficiency and effectiveness of the work of the competition authorities is digitalisation.

1. Latest steps carried out that strengthened the regulatory framework and capacity of CC.

2. Latest amendments to the Competition Law were made in 2022. The Parliament (Saeima) made amendments to the Competition Law aimed at strengthening the CC¹, providing the necessary guarantees of independence, resources and enforcement powers for the investigation and prevention of effective competition law violations.

3. The purpose of the amendments to the Law was to transpose Directive 2019/1 / EU of the European Parliament and of the Council into national regulation, i.e. the ECN + Directive, which states that the powers of competition authorities to effectively investigate and detect antitrust infringements need to be harmonized at the level of the Member States of the European Union.

4. Necessary resources for effective competition enforcement are also advanced digital investigative tools, expert skills, trainings for staff to work with e-evidence, etc.

5. In the past years, the CC has purposefully strengthened its resources in order to be able to ensure a fair competitive environment in Latvia. For example, in 2020 the CC had 47 employees, and in the end of 2022 – 56 employees.

6. Also, the funding allocated to the institution from the national budget has grown. The extra financial resources (853,467 euros in 2021, 879,769 euros in 2022 and 965,197 euros in 2023) were used to create additional jobs (IT Project manager) that came together with new duties and powers (implementation of ECN+ Directive, etc.), as well as to strengthen the capacity of IT investigation of the Authority.

7. That provided good starting point for authority to building up capacity and skills also regarding challenges in digital markets and digitalization of the CC.

2. Challenges in digital markets.

8. In daily work and long-term strategic development of the institution, the CC thinks about how to strengthen **skills and resources, investigative tools and procedures** and

¹ Press release about last amendments to the Competition Law: <https://www.kp.gov.lv/en/article/saeima-strengthens-independence-competition-council-amendments-competition-law>

enforcement powers with limited resources, that can be of a use to tackle contemporary challenges in digital markets. These challenges are identified from different sources, e.g., revealed from market surveillances and practical assessment of competition in digital markets at national level done by the CC, resulted from challenges aligning national legislation and competence of the CC with the EU regulations in digital markets. The CC plans and performs further short term and long-term actions to overcome challenges.

9. In 2022 the CC, in its market surveillance of the online platforms market², has identified online platforms' significant impact on competition, concluding that in order to ensure fair competition in Latvia it is necessary to initiate a discussion on the introduction of additional regulation that would determine the operation of online platforms and related obligations at the national level. At the same time, the competition law tools currently existing for the digital sphere may not be sufficient to identify the relevant market and the dominant position of online platforms. Currently, the necessary changes in the regulation are being considered while discussing the action plan of the new government of Latvia and the tasks for state institutions in the coming years.

10. Currently in the harmonization process are proposals for the improvement of the Competition Law, related to the implementation of the Digital Market Act adopted by the European Parliament and the Council in 2022.³ The amendments determine the involvement of the CC in the monitoring of digital platforms (gatekeepers) actions in national markets in Latvia and the future cooperation with the European Commission enforcing fair competition in digital markets.

11. Due to limited resources the CC has not established a separate DMA case team. However, whenever there is a question about the DMA or digital markets, the CC selects certain case handlers/experts and lawyers from the CC to form an ad hoc case team. These professionals are selected based on their previous experience with digital markets-related questions in addition to their previous background knowledge and interests (and not so much based on their academic qualifications alone). The CC actively works to enhance their expertise and knowledge in the DMA and digital markets by funding and otherwise supporting their participation in various international seminars and workshops.

3. A strategic approach to tackling the challenges of digitalization.

12. The CC has been strategically paying attention to the challenges of digitalization for years as much as the resources - time, finances, and human resources - have allowed.

13. One of the tasks set in Institution's Strategy 2017-2019⁴ was to reduce administrative and other restrictions for competition and promote innovations in industries that are important to the national economy. In particular, sectors in which new digital economy solutions are developed and implemented, for example, sectors where open "big data" digital economy solutions are available.

² Press release "The CC calls for discussion on additional regulation to govern online platforms": <https://www.kp.gov.lv/en/article/cc-calls-discussion-additional-regulation-govern-online-platforms>

³ Digital Markets Act: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1925>

⁴ Operational strategy for the period 2017-2019: https://lemumi.kp.gov.lv/files/documents/KP%20DARBIBAS%20STRATEGIJA%202017_2019_GADAM.pdf (Available in Latvian)

14. Also, one of the priorities of the CC's Operational Strategy for 2020-2022⁵ was the monitoring of digital markets in which rapid development or innovations were taking place.

15. On 21 September 2023, the CC approved a new Operational Strategy for the period 2023–2029⁶. The CC substantially reshaped priorities adapting to actual and future challenges, especially regarding development of competences of employees that matches future challenges. The priorities and objectives identified confirm that the CC will strengthen its capacity to detect and prevent significant distortions of competition, both by developing employee competences and professionalism, by modernising business processes and introducing innovations, and by continuing effective cooperation with national and international partners.

Table 1. Strategic priorities of the Competition Council 2023-2029

PRIORITIES	1. Team is professional, committed and development-oriented	2. Results-oriented day-to-day operations and cooperation, ensuring the detection of significant impediments to competition and the promotion of competition	3. Innovative and sustainable working environment
OBJECTIVES FOR IMPLEMENTING THE PRIORITY	1.1. Systemic development of managerial competences. 1.2. Individually focused development of employees. 1.3. Engagement and team-building activities.	2.1. Improvement and modernisation of internal and external processes and services to improve the efficiency and quality of the institution. 2.2. Ensuring diverse and mutually beneficial cooperation at the national and international level. 2.3. Detection and prevention of major restrictions of competition to protect consumers and fair competition through sound prioritisation of cases. 2.4. Implementing measures to raise public awareness of free and fair competition. 2.5. Ensuring a sustainable quality of rule of law in the institution's activities. 2.6. Ensuring the transfer of employee knowledge and experience.	3.1. Developed digital tools. 3.2. Principle of reducing CO ₂ footprint in place. 3.3. Financial diagnostics carried out to ensure availability of sufficient financial resources to meet the institution's needs. 3.4. Strengthened sustainability of the institution.

16. All three priorities set for the next seven years: 1) Team is professional, committed and development-oriented, 2) Results-oriented day-to-day operations and cooperation, ensuring the detection of significant impediments to competition and the promotion of competition and 3) Innovative and sustainable working environment contribute to strengthening both the institution itself to become more digital and modern, using digital tools to detect violations, and to strengthen the competences of employees, including strengthening knowledge of digital markets and acquiring skills in evaluating digital

⁵ Operational strategy for the period 2020–2022: <https://www.kp.gov.lv/lv/media/1265/download> (Available in Latvian)

⁶ Operational strategy for the period 2023–2029: <https://www.kp.gov.lv/en/article/competition-councils-strategy-2023-2029-enters-force>

evidence. The institution has implemented individual development plans for each employee to improve the weaknesses of each expert and strengthen talents.

4. Exchange of experience.

17. The CC strategy 2023-2029 places great emphasis on the development of employee competencies. In practice the CC is using variety of options to strengthen skills already. Employees regularly participate in external trainings (58 trainings in 2022) enhancing their professional competencies through conferences, international forums, courses organized by the School of Public Administration and training and skills coaching by other professionals. Some of the subjects also cover developments of digital markets or processing of digital evidence. Also, in order to increase employees' knowledge and share skills about e-evidence processing or implementation of digital e-case, the institution's employees share their experience in internal training events.

18. One of strategies main objectives is also to ensuring diverse and mutually beneficial cooperation at the national and international level. Thus, the CC have organized the Baltic Competition Conference in 2022 where one of the discussion panels with experts of OECD and national state institutions were dedicated to digital markets. Also, regular cooperation meeting with European Competition Network and national state governmental institutions takes place to discuss desired digitization improvements in institutions.

19. In order to ensure successful enforcement of competition, the CC cooperates (also organizes exchange of experience) with such state institutions as the State Revenue Service, State Police, The Corruption Prevention and Combating Bureau (KNAB), Forensic Expertise Center, Criminalistics Administration, including IT specialists of other state institutions providing professional support and expertise during procedural activities.

5. Cross-border issues investigated more effectively.

20. The latest amendments to the Competition Law⁷ in 2022, is supplemented with the procedure and regulations for mutual co-operation between competition authorities. This will ensure a more efficient exchange of information between institutions in the case of enforcement of the TFEU Art. 101 and 102 in decision-making and enforcement processes, incl. digital market topics.

21. Cross-border cooperation in changing markets that surpass borders of national market should also include cooperation in market inquiries and monitoring. Given the limited resources available to the Competition Council and the importance of the rapidly evolving and growing digital markets, which often extend beyond national borders, joint cross-border cooperation, and joint forces with neighbours is an essential precondition for promoting fair competition so far in not so well-known markets not only in the territory of their country, but at the same time in the entire Baltic region.

22. Thus, in order to gain an understanding of the operation model of digital platforms, as well as to identify possible issues that could negatively affect competition, Latvian and

⁷ The Competition Law: <https://likumi.lv/ta/en/en/id/54890-competition-law>

Lithuanian competition authorities launched a parallel monitoring of online marketplaces to assess the impact of e-commerce development in the Baltic region in 2022.⁸

23. In market study the CC identified that online platform practices may pose a risk of restricting competition, while concluding that online platforms promote competition between the companies using their services, as well as bring benefits to consumers.

24. At the level of the Baltic region, taking into account the often-common issues and challenges, the operative and informal ad-hoc cooperation of experts has also proven itself as an essential and effective tool, exchanging information, conclusions and further action plans, for example on company mergers affecting several Baltic countries or conduct of undertakings affecting competition in the context of a cartel or abuse of a dominant position.

6. Developing IT capacity for more effective investigation of competition infringements.

25. In order to strengthen the technical and technological IT capacity of the authority to ensure more effective investigations of competition infringements, the CC next year plans to recruit additional IT forensic expert (in 2023 the CC employs one IT forensic expert and one IT project manager.) Also, the CC intends to create a data analyst/scientist position, who will work with big data and artificial intelligence, train it and develop it, so that large amounts of data can be processed for work needs.

26. At the same time in 2023, IT forensic laboratory were developed for processing the e-evidence. The CC use a number IT-forensics programs (UFED 4PC Ultimate, REEACON LAB, NUIX Workstation, EnCase Forensic). These programs are used to search, copy and analyse evidence stored electronically on different devices during investigation actions (computers, mobile phones, external and internal data collectors etc.).

27. All necessary IT equipment, as well as necessary programs and licences for case handlers/investigators to process and analyse the e-evidence were purchased in 2022. Also, staff training on the use of the IT laboratory and processing of e-evidence were carried out.

28. Taking into account that the CC uses special software in its work, which is not used by other investigative institutions in Latvia, there are no appropriate courses available in Latvia that could be attended to gain experience. The IT investigator should regularly upgrade its qualifications, especially for work with special software. For example, NUIX software related courses/seminars are attended, and exams are taken, resulting in certification. Also, additional opportunities to increase qualifications are being sought in cooperation with other law enforcement institutions internationally, for example courses organized by OLAF have been attended.

29. In addition, the CC in cooperation with the Ministry of Environment and Regional Development, the State Regional Development Agency, which manages the Electronic Procurement System in Latvia, as well as the Danish and Finnish competition authorities invests resources to implement and develop the automatic cartel screening tool taking advantage of artificial intelligence to detect infringements. For example, selecting and flagging data from state electronic procurement system that indicate possible violations. Other Latvian state institutions are also interested in the use of such an automated tool, which could select large amount of data and systemize and analyse them, to adapt it and

⁸ Press release “Latvian and Lithuanian competition authorities are launching a monitoring of online marketplaces”: <https://www.kp.gov.lv/en/article/latvian-and-lithuanian-competition-authorities-are-launching-monitoring-online-marketplaces>

use it in their fields of actions in the future. The Prosecutor's Office, the Ministry of Economy, and others have already shown such interest.

30. At the same time, the CC is the flagship/implementer of digital e-case in Latvia. The institution has created a concept, technical specifications for the implementation of the e-case and has also prepared methodological material for employees on how to design and structure the digital file. However, there is currently no funding available for the physical creation and construction of the system. Such implementation of the e-case could be useful for all investigative institutions in Latvia, which conduct investigations within the framework of the administrative process. The implementation of the e-case project is discussed with the European Commission.

31. Until e-case system is not made, for now in order to save resources, infringement case materials are prepared electronically and sent to the participants in a link that can be accessed with a unique password. This saves the time resources that should be devoted to introducing each participant to the case.

32. Despite the institution's limited resources, the CC is committed to constant digital environment development, therefore it is emphasized in the CC's operational strategy, in the amendments to the Competition Law and in the daily work of the CC, both in cooperation with other institutions, and in developing expertise, and in developing the institution's IT investigative capacity.