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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**The Future of Effective Leniency Programmes – Note by Latvia**

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This document reproduces a written contribution from Latvia submitted for Item 5 of the 137th meeting of Working Party 3 on 13 June 2023.

More documents related to this discussion can be found at  
<https://www.oecd.org/competition/the-future-of-effective-lenency-programmes-advancing-detection-and-deterrence-of-cartels.htm>

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## *Latvia*

### 1. Introduction

1. In this written contribution, the Competition Council of Latvia (hereinafter - the Competition Council) discusses recent trends and developments regarding the use of the leniency programme in Latvia.

### 2. History and context

2. The leniency programme has been in force in Latvia for approximately 20 years. It was originally set out in a regulation of the Cabinet of Ministers that defines the methodology for calculating fines for competition law infringements, but since 2016 the main criteria of the leniency programme have been included in the Latvian Law on Competition. In the beginning the leniency programme only set out different options for a reduction in fine from 30% to 75%, but did not provide for full immunity, which was introduced from 2004. According to the Latvian Law on Public Procurement, undertakings who receive full immunity or a reduction in fine within the leniency programme are also exempted from an exclusion from public tenders, which otherwise applies for three years to undertakings who have been found in breach of competition law.

### 3. Criteria

3. If an undertaking is the first to provide information and evidence to the Competition Council regarding a prohibited agreement in respect of which there is no ongoing Competition Council investigation, it can receive full immunity from any fines arising from that agreement. Alternatively, if an investigation is already under way, an undertaking can obtain a reduction in fine between 20% and 50% if it provides the Competition Council with information and evidence that substantially supplements the information and evidence already in the Competition Council's possession. The first undertaking to contact the Competition Council with such supplemental information can obtain a reduction in fine of between 30% and 50%, while any subsequent applicants will only be eligible for a reduction between 20% and 30%. The reason for this two-level approach is to incite rivalry between undertakings, encouraging them to provide information to the Competition Council promptly. However, an undertaking can also have its fine for participation in a prohibited agreement reduced by 50% if it supplies information to the Competition Council about *another* prohibited agreement in respect of which it qualifies for full immunity.

4. The main criteria for qualifying for both types of leniency are summarised below.

**Table 1. Criteria to qualify for leniency**

Full immunity	Reduction in fine
<a href="#"><u>The Law on Competition</u></a> <sup>1</sup>	
<ul style="list-style-type: none"> <li>• First to provide sufficient information and evidence to enable the Competition Council to open an investigation and conduct dawn raids; and</li> </ul>	<ul style="list-style-type: none"> <li>• Provides information and evidence that substantially supplements the information and evidence already in the Competition Council's possession; or</li> </ul>

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|--|--|
| <ul style="list-style-type: none"> <li>Did not coerce other undertakings into the prohibited agreement.</li> </ul> | <ul style="list-style-type: none"> <li>Supplies information to the Competition Council about another prohibited agreement in respect of which it qualifies for full immunity.</li> </ul> |
|--|--|

#### Regulation of the Cabinet of Ministers on Calculating fines for competition law infringements<sup>2</sup>

- Immediately ceases participation in the prohibited agreement (unless instructed otherwise by the Competition Council)
- Genuine, full, continuous and expeditious cooperation with the Competition Council, including:
  - providing all relevant information and evidence relating to the breach
  - responding promptly to all Competition Council's requests
  - making directors and employees of the company available for interviews with the Competition Council
  - not destroying, falsifying or concealing relevant information and evidence
  - not disclosing the fact or the contents of its leniency application before the Competition Council has issued its statement of objections (unless agreed otherwise)

Notes:

<sup>1</sup> See section Section 12

<sup>2</sup> See sections 30-32.

## 4. Use of leniency in Latvia

5. The Competition Council rarely receives leniency applications for full immunity. Between 2012 and 2023, the Competition Council received a total of 20 leniency applications in 12 cases<sup>1</sup>. Out of the 20, 15 leniency applications were for a reduction in fine in an ongoing investigation (after dawn raids had already been conducted by the Competition Council), and only five were applications for full immunity.

**Table 2. Use of leniency in Latvia, 2012-2023**

<b>Infringement decisions 2012-2023</b>	40
<b>Ongoing cases</b>	4
<b>Total leniency applications</b>	20
Applications for full immunity	5
Applications for a reduction in fine	15

**Table 3. Leniency applications by year, 2012-2023**

Year	Applications for full immunity	Applications for a reduction in fine
2023	1	-
2022	-	1
2021	-	3
2020	1	-
2019	-	-
2018	-	-
2017	-	-
2016	-	1
2015	1	10
2014	-	-

<sup>1</sup> One of the applications is very recent, and a formal investigation has not yet been opened.

2013	1	-
2012	1	-

6. The first notable application for full immunity was received by the Competition Council in 2012. It concerned a cartel between car dealerships, that had agreed details of their participation in tenders for Volkswagen cars. The information provided by the leniency applicant allowed the Competition Council to impose fines on undertakings exceeding seven million euros in total. The next application for full immunity that resulted in a significant case for the Competition Council was in 2015 concerning a cartel in tenders for professional stage equipment. The fines in this case totalled over 300 thousand euros.

7. Since 2015, the Competition Council has mainly received applications for a reduction in fine. These applications have been regarding cartels in public procurements and have concerned a wide range of sectors such as medical equipment, IT and logging services. The Competition Council received one application for full immunity in 2020, but in that case found that there was not enough evidence to proceed with a case against the applicant, and so the granting of immunity was unnecessary. The Competition Council did, however, issue an infringement decision against the other participants in the cartel, who were fined nearly 2 million euros in total.

8. Finally, the Competition Council has very recently (in 2023) received another application for full immunity.

9. As regards an explanation for the lack of full immunity applications, surveys conducted by the Competition Council indicate that a major problem is the small size of the market in Latvia. Competitors often know each other personally and can sometimes be unavoidable trading partners. As a result, no one wants to be seen as ‘the traitor’. In addition, there is general mistrust of government institutions, and some undertakings have also said that they are unaware of the leniency programme, although this is something the Competition Council has been working on hard to improve (see section 6 below).

10. Latvian law also provides for a settlement procedure, whereby if an undertaking admits it has breached competition law and agrees not to appeal the Competition Council’s decision, its fine can be reduced by 10%. Different from leniency, which requires cooperation early on in the investigation, the settlement procedure is used after the Competition Council has already issued its statement of objections. Given the differences in the maximum reduction in fine, it would seem unlikely that availability of the settlement procedure would affect an undertaking’s incentives to apply for leniency. An undertaking can also use both leniency and settlement, to obtain a maximum reduction in fine (50% for leniency plus 10% for settlement). Finally, unlike with the leniency programme, the exclusion from public tenders mentioned in paragraph 4 is fully applied in respect of those undertakings who only receive a settlement reduction.

## 5. Raising awareness

11. Measures to raise awareness of fair competition, prohibited agreements and the possibility to apply for leniency form an important part of the Competition Council’s work. The Competition Council frequently organizes seminars and other events for public administrative bodies, undertakings and their associations, and other interest groups. These events are led by employees of the Competition Council. Occasionally seminars are also held in cooperation with partners, such as the Corruption Prevention and Combating Bureau (hereinafter – the CPCB) or the Procurement Monitoring Bureau. There may be 15 – 20 such events per year. In the period January to April 2023 the Competition Council has

already organised 10 such events. Some of the planned future events will specifically focus on the leniency programme.

12. In addition, the Competition Council has prepared various written materials about the leniency programme, including detailed guidelines on its application. Information about the leniency programme is available on the Competition Council's website and pamphlets containing information about it are handed out at dawn raids. The leniency programme has also been explained in various media publications.

## 6. Other sources of intelligence

13. Given the lack of leniency applications for full immunity, the Competition Council has had to rely on other sources of intelligence for initiating cases. One of the main sources of intelligence for the Competition Council has been the CPCB. The Competition Council and the CPCB have a close working relationship whereby the CPCB shares information obtained in its investigations that may also indicate possible breaches of competition law with the Competition Council. This, for example, was how the Competition Council became aware of a cartel in the construction sector, which ended up being one of the most significant cases in the Competition Council's history, with fines of over 16.5 million euros being imposed on 10 undertakings. This cooperation with the CPCB is important to ensure fairness and equality in public tenders where the aims and tasks of the CPCB and the Competition Council are similar, and often evidence gathered by one authority can include signs of an infringement within the responsibility of the other. The CPCB also has much wider investigative powers than the Competition Council and so will often become aware of potential infringements first.

14. Another valuable source of intelligence for the Competition Council is public authorities - public procurement organisers. The Competition Council has been actively educating public authorities to recognise signs of possible cartel activity in procurement procedures, both through regular talks on the topic and guidance materials published on its website, and it regularly receives notifications from public authorities regarding possible breaches. Additionally, it is important to note that from January 2023, amendments to public procurement laws provide that if a procuring authority has suspicions of a prohibited agreement between participants, it may exclude them from that particular tender without waiting for the Competition Council to initiate a case and issue a decision. If approached by a public authority in such circumstances, the Competition Council within 10 working days from receiving the request has a duty to provide an initial opinion on whether the signs identified by the authority (mostly from the documents submitted to it by the undertakings) may indeed indicate a possible prohibited agreement. This new procedure is expected to result in the Competition Council receiving more intelligence about possible breaches. To date, the Competition Council has received four such requests, but this number will likely rise once the system becomes more established.

15. The Competition Council is also in the process of developing a screening tool for identifying possible cartel activity. While an automated version of this tool (which would allow the Competition Council to pull data from various databases and looks for anomalies) is still a work in progress, in one recent case the Competition Council used variation screening (showing differences in submitted tender prices in a market over time) using readily available tools (MS Excel) and inputting the data manually. In that particular case, the results of the exercise were used by the Competition Council to reinforce – together with other evidence – that a cartel was in existence during a specific time period. Also, at least in one case, the results of public tender screening were used to initiate a case. This

indicates that screening tools may be used as an additional and valuable source of intelligence.

16. There is also a whistleblowing mechanism available, which allows natural persons to report anticompetitive conduct that they have become aware of as part of their employment. When using the whistleblowing mechanism, the identity of the whistleblower is disguised to protect him or her from any negative consequences of reporting (e.g. retaliation by the employer). In addition to the usual ways of contacting the Competition Council (phone, post, general e-mail address), a whistleblower may also submit information to the Competition Council by sending it to a dedicated whistleblowing e-mail address or using an electronic form available on the government's whistleblowing website. While the Competition Council has received a handful of whistleblower reports regarding possible anticompetitive conduct, to date there have not been any cases initiated as a result of this mechanism.

17. Finally, there is also an option to report any signs of suspected cartel activity anonymously on the Competition Council's website (*tip-off*).

## 7. Amendments to legislation and expansion of the scope of the leniency programme to include vertical agreements

18. The scope of the leniency programme in Latvia was expanded in 2022 to include vertical agreements relating to resale price maintenance (hereinafter – RPM) and restrictions on passive sales. The aim of these amendments was to broaden the circumstances in which undertakings can apply for leniency, thereby improving the Competition Council's ability to detect these types of restrictions, which can potentially also be harmful to competition. The benefit of using the leniency programme is that the requirements set out in the law offer undertakings a predictable procedure and outcome for obtaining a reduction in fine or full immunity. Before these amendments, detection of such vertical restrictions through ex-officio investigation tools was rare.

19. As vertical restrictions are set as one of the Competition Council's priorities, important part of its work has also been educating undertakings about this particular aspect of competition law. It seems that undertakings are often unaware that vertical as well as horizontal restrictions can be caught by the prohibition on anti-competitive agreements, and sometimes a possible infringement may contain signs of both horizontal and vertical agreements (like *hub-and-spoke*). To address this, starting from last year, the Competition Council has been actively educating undertakings on different types of vertical restrictions and circumstances in which such restrictions may breach competition law.

20. The Competition Council has already received its first leniency application regarding RPM. This was not a full immunity application, but an application for a reduction in fine after a dawn raid by the Competition Council. The initial information about the RPM was notified to the Competition Council by one of the retailers on whom the RPM had been enforced.

21. This expansion of the leniency rules to include certain vertical restrictions has the potential of raising some interesting questions. For example, in a vertical case, e.g. one concerning RPM, the competition authority may decide (according to the Competition Council's previous practice) to bring the case only against the seller, who is usually the one enforcing the RPM in its distribution network. In these circumstances, the rules requiring the competition authority to protect the identity of the leniency applicant may mean that the competition authority ends up with a public decision that is anonymous, i.e. does not name any undertakings that have breached the law.

22. In some cases there may be a thin line between vertical RPM restrictions and *hub-and-spoke* cartels, i.e. a vertical RPM initiated by a seller might in some cases evolve in a closer information exchange between undertakings that buy goods from this seller. That means that leniency as a tool to foster detection of RPM may also have a broader deterrent effect.

## 8. Cross-border sharing of information received as part of a leniency application

23. At the ECN Cartels Working Group held in October 2022 there was a discussion about the level of consent required to share information from a leniency application with other competition authorities if the application mentions potential breaches of competition law in their jurisdictions. The prevalent view seemed to be that acknowledgment by the leniency applicant that such information will be shared, rather than their consent, is required. The Competition Council has an ongoing case where this issue is likely to be relevant, and so will need to consider the position it will take. The Latvian Competition law requires the Competition Council to obtain the leniency applicant's consent in such situations, but arguably this requirement could be met by asking for a signed acknowledgment that information will be shared.

## 9. Conclusion

24. The Competition Council rarely receives leniency applications for full immunity, which has meant that it most often has had to rely on other sources of intelligence for initiating cases. However, as a result of the Competition Council's pro-active approach in educating the public about prohibited agreements and the possibility to apply for leniency, and effective case work, with 40 infringement decisions issued between 2012 and 2023, over the years the Competition Council has received a good number of applications for a reduction in fine, as well as a smaller number of applications for full immunity. Looking at the most recent Competition Council's cases, most have involved a leniency application either for a reduction in fine or full immunity. To encourage the use of leniency even more, the Competition Council has recently expanded the scope of the leniency programme to include a wider range of agreements.