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If a whole or part of a paragraph has been amended, the date of the amending regulation appears in square brackets at the end of the paragraph. If a whole paragraph or sub-paragraph has been deleted, the date of the deletion appears in square brackets beside the deleted paragraph or sub-paragraph.

Republic of Latvia

Cabinet

Regulation No 862

Adopted 19 October 2004

Procedures for the Calculation of Fines for the Violations referred to in Section 11, Paragraph one and Section 13 of the Competition Law

*Issued pursuant to
Section 12, Paragraph five and
Section 14, Paragraph four of
the Competition Law*

I. General Provisions

1. Terms used in these Regulations:

1.1. **horizontal cartel agreement** – an agreement among competitors, the purpose of which is to hinder, restrict or distort the competition among them, including an agreement regarding direct or indirect fixing of prices or tariffs in any manner or provisions of formation thereof, as well as regarding such exchange of information, which relates to prices or sales provisions, an agreement regarding restriction or control of the scope of manufacturing or sales, markets, technical development or investments, an agreement regarding the division of markets, taking into account the territory, customers, suppliers or other conditions, and an agreement regarding the participation or non-participation in competitions or auctions or regarding the provisions of such activity (inactivity);

1.2. [25 April 2006]
[25 April 2006]

2. These Regulations prescribe the procedures for the determination of fines for the violations referred to in Section 11, Paragraph one and Section 13 of the Competition Law.

3. A fine shall be calculated as a percentage of the net turnover for the last closed financial year of a market participant before the day of the determination of the violation.

4. If the violation referred to in the Competition Law was committed by a commercial company registered in Latvia, in which a foreign merchant has the decisive influence, or a

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branch of a foreign merchant, the fine shall be calculated from the net turnover of the last closed financial year of the relevant commercial company or branch.

5. If the violation referred to in the Competition Law was committed by a public person acting as a participant of the market, the fine shall be calculated from the income of economic activity thereof in the last closed financial year, but if such does not exist the minimum fine provided for in Paragraphs 12 and 14 of the Competition Law shall be imposed.

6. The following income sums after deduction of the value added tax shall be considered the net turnover of credit institutions:

- 6.1. interest income;
- 6.2. income from securities;
- 6.3. commission remuneration received;
- 6.4. net profit from financial operations; and
- 6.5. income from another type of activity.

7. The income included in the annual and consolidated accounts of credit institutions shall be included in the net turnover of the credit institutions.

8. The net turnover of insurance companies shall be presumed to be the gross value of written premiums, which includes all the amounts that have been received and are to be received for the insurance contracts (also reinsurance premiums) entered into by the insurance company or on its behalf, from which the tax payments and fees or mandatory payments imposed on an insurance premium or the aggregate amount of premiums have been deducted.

9. If a market participant is a natural person who is a personal income tax payer, a fine shall be calculated as a percentage of the income of the last closed financial year gained from the economic activity of the natural person.

10. If a market participant cannot draw up a report on the last closed financial year regarding the whole financial year, the fine shall be calculated as a percentage of the net turnover of the market participant regarding 12 calendar months counting from the day when it commenced the activity in the relevant market. If less than a year has passed from the commencement of activity until the day of determining a violation, the fine shall be calculated from the net turnover of the market participant counting from the day when the activity was commenced until the last full month prior to the determination of the violation.

11. If the net turnover of the last financial year of a market participant has been expressed in a foreign currency, the total amount of a fine in lats shall be determined according to the exchange rate specified by the Bank of Latvia on the day of the determination of the violation.

12. If a registered or non-registered partnership of the market participants (for example, an association, a union) or the official thereof has committed the violation referred to in Section 11 of the Competition Law, the fine shall be imposed on such market participants, which are the members of the partnership and have participated in the referred to violation.

II. Amount of Fines

13. In determining the amount of a fine, the seriousness and duration of the violation shall be taken into account.

14. In determining the seriousness of a violation the following shall be taken into account:

- 14.1. the type of violation;
- 14.2. the consequences caused by the violation or the possible consequences; and
- 14.3. the role of each market participant in the violation.

15. According to the type of violation, vertical agreements and horizontal co-operation agreements, which hinder, restrict or distort competition, shall be considered to be a less serious violation, the abuse of dominant position and vertical agreements regarding the restriction of determination of resale price of a customer – a serious violation and horizontal cartel agreements and agreements containing restrictions to the import or export of goods, – a particularly serious violation.

16. In evaluating the role of each market participant involved in a violation, it shall be taken into account whether:

- 16.1. the market participant has been the initiator of the violation; or
- 16.2. the market participant had had an active or passive role in the violation.

17. The total amount of a fine for one violation shall be calculated by summing up the fines specified in accordance with Paragraphs 18 and 19 of these Regulations.

18. Taking into account the degree of seriousness of a violation, the amount of a fine shall be determined as follows:

- 18.1. if a less serious violation has been committed – up to 0.5% of the net turnover for the last financial year;
- 18.2. if a serious violation has been committed – from 0.5 to 1.5 % of the net turnover for the last financial year; or
- 18.3. if a particularly serious violation has been committed – from 1.5 to 7 % of the net turnover for the last financial year.

19. Taking into account the duration of a violation, the amount of a fine shall be determined as follows:

- 19.1. if the duration of a violation does not exceed a year or a violation is manifested as a single activity, the amount of a fine determined in accordance with Paragraph 18 of these Regulations shall not be increased;
- 19.2. if a violation continues for more than a year, but does not exceed five years, a fine shall be up to 0.5% of the net turnover for the last financial year; or
- 19.3. if a violation continues for more than five years, a fine shall be from 0.5 to 1% of the net turnover for the last financial year.

20. The total amount of a fine may be increased if at least one of the following aggravating circumstances exists:

- 20.1. a market participant has repeatedly committed a violation of the same type within the time period of five years and the Competition Council (hereinafter – the Council) has determined it and has taken a relevant decision;

20.2. it is necessary to increase a fine in order to exceed the income gained by a market participant by committing the violation referred to in the Competition Law (if the amount of illegally obtained income may be evaluated objectively); and

20.3. it is determined that a market participant has directly or indirectly forced other market participants to perform activities by which the prohibition referred to in Section 11, Paragraph one of the Competition Law is being violated.

21. The total amount of a fine may be reduced (however, the fine may not be less than LVL 250) if at least one of the following mitigating circumstances exists:

21.1. the violation is terminated as soon as a market participant receives the information from the Council regarding a possible violation referred to in Section 11, Paragraph one or Section 13 of the Competition Law;

21.2. the market participant has voluntarily eliminated the consequences of a violation before the decision of the Council on determining the violation is taken; or

21.3. a market participant has provided complete and true information or evidence which are of essential importance in the determination of the violation referred to in Section 11, Paragraph one or Section 13 of the Competition Law.

22. If a market participant has committed several of the violations referred to in Section 11, Paragraph one or Section 13 of the Competition Law, and they are being examined concurrently in one proceeding, the amount of the fine shall be determined separately for each violation of a paragraph of the relevant section. The final amount of a fine shall be calculated within the scope of such fine, which has been determined for the most serious violation.

23. If a market participant has committed the violations referred to in both Section 11, Paragraph one and Section 13 of the Competition Law, which are being examined concurrently in one proceeding, the amount of a fine shall be determined separately for each violation referred to in each section. The final amount of a fine shall be calculated within the scope of such fine, which has been determined for the most serious violation.

24. If the net turnover for the last closed financial year of a market participant in the particular market involved in the violation is less than 10% of the net turnover for the last closed financial year of such market participant, the total amount of the fine may be reduced (however, the fine may not be less than 250 lats).

25. If more than five years have passed since the termination of a violation and the violation has not left substantial negative consequences in the market, the Council may impose a fine of 250 lats.

III. Release of Participants of Horizontal Cartel Agreements from the Payment of Fine or Reduction of Fines

26. If a horizontal cartel agreement has been detected, the Council shall release a market participant from the payment of a fine for participation therein, if the market participant has been co-operating with the Council and all the conditions referred to in this Paragraph exist:

26.1. a market participant pursuant to its own initiative has been the first to notify the Council regarding the horizontal cartel agreement, in which it is involved, and the Council does not have the information at its disposal at the time, which would allow to commence an investigation of the possible violation or to detect the violation;

26.2. a market participant has provided the Council with all the information and evidence at his or her disposal;

26.3. the information and evidence provided to the Council regarding the potential violation referred to in the Competition Law is sufficient for the commencement of an investigation of the possible violation or the detection of the violation

26.4. a market participant has been co-operating actively with the Council during the whole process of the investigation of a violation; and

26.5. a market participant has not been an initiator of the particular prohibited agreement nor has it had a decisive role in the prohibited activity, and it has not forced other market participants to participate in the prohibited activity.

27. If the investigation of a violation regarding the possible horizontal cartel agreement has already been commenced, the reduction of the amount of the fine applicable to the market participants who upon their own initiative provided the Council with the information, which is substantial evidence of the specific violation, shall be as follows:

27.1. to the market participant who first provided the referred to information – from 50 to 90 %, however, the fine may not be less than 500 lats. The Council shall reduce the fine if at the moment of information provision it does not have the relevant information at its disposal and the conditions referred to in Sub-paragraphs 26.4 and 26.5 of these Regulations exist;

27.2. to other market participants – from 30 to 49%, however, the fine may not be less than 500 lats. The Council shall reduce the fine if at the moment of information provision it does not have the relevant information at its disposal and the conditions referred to in Sub-paragraph 26.4 of these Regulations exist.

28. If a market participant considers that provisions referred to in Paragraphs 24, 26 or 27 of these Regulations are applicable to him or her, such market participant shall submit to the Council a justified submission.

29. The Council shall evaluate the information provided by the market participant and the compliance thereof with the provisions referred to in Paragraphs 24, 26 or 27 of these Regulations.

30. If the Council applies the reduction of a fine or release from a fine to a market participant in accordance with Paragraphs 26 and 27 of these Regulations, Paragraph 21 of these Regulations shall not be applied in relation to such market participant.

Prime Minister

I. Emsis

Minister for Economics

J. Lujāns