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Republic of Latvia

Cabinet

Regulation No. 796

Adopted 29 September 2008

Procedures for the Determination of Fines for the Violations Provided for 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. These Regulations prescribe:
 - 1.1. the procedures for the determination of fines for the violations provided for in Section 11, Paragraph one and Section 13 of the Competition Law;
 - 1.2. the amount of fine, taking into account the gravity and duration of a violation, and mitigating or aggravating circumstances;
 - 1.3. the cases where a fine may be reduced or increased; and
 - 1.4. the procedures by which the participants of a horizontal cartel agreement are released from a fine or the fine is reduced.
2. Within the meaning of these Regulations, a prohibited vertical agreement shall be an agreement which is not exempted from the prohibitions specified in Section 11, Paragraph one of the Competition Law between market participants, each of which performs economic activities in a different level of the production or distribution of goods, and it shall apply to the purchase or sales provisions of goods.
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 date of determination of the violation.
4. If a commercial company, which is registered in Latvia and in which a foreign merchant has the decisive influence, or a branch of a foreign merchant has committed the violation referred to in Section 11, Paragraph one and Section 13 of the Competition Law, the fine shall be calculated from the net turnover for the last closed financial year of the respective commercial company or branch.
5. If a commercial company, the founder of which is a public person or a public person operating as a market participant in the field of private rights within the meaning of Section 1,

Clause 9 of the Competition Law, has committed the violation referred to in Section 11, Paragraph one or Section 13 of the Competition Law, the fine shall be calculated from the income from the economic activities of the referred to person during the last closed financial year. If it is not possible to draw up a report on the last closed financial year for a complete financial year for the referred to person, the fine shall be calculated as a percentage of the income from economic activities of the referred to person for 12 calendar months beginning with the date when it commenced activities. If less than a year has passed from the commencement of activities until the date of determination of the violation, the fine shall be calculated from the income from economic activities of the referred to person, counting from the day when activities were commenced until the last complete month prior to the date of committing the violation.

6. The sum of the following positions of income shall be recognised as the net turnover of credit institutions:

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

7. Income included in the annual and consolidated reports of credit institutions shall be included in the net turnover of credit institutions.

8. The gross value of signed premiums, which includes all sums received and to be received for insurance contracts (also reinsurance premiums) entered into by an insurance company or entered into the name thereof, deducting the tax payments and fees or mandatory payments, which are imposed on an insurance premium or the total amount of premiums, shall be recognised as the net turnover of insurance companies.

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

10. If it is not possible to draw up a report on the last closed financial year for a complete financial year for a market participant, the fine shall be calculated as a percentage of the net turnover of the market participant for 12 calendar months beginning with the date when it commenced activities in the relevant market. If less than a year has passed from the commencement of activities until the date of determination of the violation, the fine shall be calculated from the net turnover of the market participant, counting from the day when the activities were commenced until the last complete month prior to the date of committing 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 determination of the violation.

12. If a registered or non-registered union of market participants (for example, association, partnership, society, foundation) or an official thereof has committed the violation referred to in Section 11, Paragraph one of the Competition Law, the fine shall be imposed on the market

participants, which are members of the union and have participated in the referred to violation, or on the union of market participants.

II. Amount of a Fine

13. In determining the amount of a fine, the seriousness and duration of a 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 thereof;
- and
- 14.3. the part of each market participant involved in the violation.

15. According to the type of violation, prohibited vertical agreements and prohibited horizontal co-operation agreements, as well as abuse of the dominant position in retail trade shall be deemed a mild violation, abuse of the dominating position and vertical agreements, the goal of which is to restrict the opportunity of a purchaser to determine the resale price – a serious violation, horizontal cartel agreements and agreements containing restrictions for the import or export of goods – an especially serious violation.

16. In evaluating the role of each market participant involved in a violation, the following shall be taken into account if at least one of the following conditions exists:

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

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

18. Taking into account the level of gravity of a violation, a fine from the net turnover of the last financial year shall be determined as follows:

- 18.1. if a mild violation, manifested as abuse of the dominant position in retail trade, has been committed for the first time – up to 0.03%, for any subsequent violation – up to 0.15 per cent;
- 18.2. if a mild violation, manifested as a prohibited vertical agreement or a prohibited horizontal co-operation agreement, has been committed – up to 0.5 per cent;
- 18.3. if a serious violation has been committed – from 0.5 to 1.5 per cent; and
- 18.4. if an especially serious violation has been committed – from 1.5 to 7 per cent.

19. Taking into account the duration of a violation, the amount of fine from the net turnover of the last financial year shall be determined as follows:

- 19.1. if the duration of the violation does not exceed a year, the amount of fine specified pursuant to Paragraph 18 of these Regulations shall not be increased;
- 19.2. if the violation continues for more than a year, but does not exceed five years, the fine shall be up to 0.5 per cent; and
- 19.3. if the violation continues for more than five years, the fine shall be from 0.5 to 1 per cent.

20. Taking into account the duration of violation, the amount of a fine for a violation, which is specified in Section 13, Paragraph two of the Competition Law, shall be determined as follows from the net turnover of the last financial year:

20.1. if the duration of the violation does not exceed a year and it has been committed for the first time – up to 0.005 per cent, for any subsequent violation – up to 0.02 per cent;

20.2. if the violation continues for more than a year and it has been committed for the first time – up to 0.01 per cent, for any subsequent violation – up to 0.03 per cent; and

20.3. if the violation continues for more than five years and it has been committed for the first time – up to 0.015 per cent, for any subsequent violation – up to 0.04 per cent.

21. The total amount of a fine may be increased in the following cases:

21.1. if at least one of the following aggravating circumstances exists:

21.1.1. a market participant has committed the same type of violation repeatedly, and the Competition Council (hereinafter – Council) has determined it and taken a relevant decision;

21.1.2. a market participant has directly or indirectly forced other market participants to perform activities, with which the prohibition referred to in Section 11, Paragraph one of the Competition Law is being violated; or

21.1.3. a market participant hinders investigation and hides the committed violation;

21.2. if the Council determines that it is necessary to increase a fine in order to exceed the income, which a market participant has earned by committing the violation referred to in Section 11, Paragraph one or Section 13 of the Competition Law (if it is possible to evaluate the sum of the illegally earned income).

22. If the Council determines that a market participant, which has been imposed a fine, does not fulfil the legal duty imposed on it, the fine may be increased up to the maximum amount specified in Section 12, Paragraph four and Section 14, Paragraph three of the Competition Law.

23. The Council may reduce the total amount of a fine in the following cases:

23.1. if mitigating circumstances exist, for example:

23.1.1. the violation has been discontinued as soon as a market participant received the information from the Council regarding the violation referred to in Section 11, Paragraph one or Section 13 of the Competition Law;

23.1.2. a market participant has voluntarily eliminated the consequences of the violation before the Council has taken a decision regarding determination of the violation;

23.1.3. a market participant, upon its own initiative, has provided complete and true information or evidence having essential meaning in the determination of the violations referred to in Section 11, Paragraph one or Section 13 of the Competition Law;

23.1.4. a market participant has provided evidence that during the period of time while it was a participant of an illegal agreement it actually did not implement this agreement;

23.1.5. a market participant has reimbursed the damages that arose from the violation committed;

23.2. if the net turnover of the last closed financial year of a market participant in the market where the violation has taken place is less than 10 per cent of the net turnover for the last closed financial year of the market participant.

24. If a market participant has committed several violations referred to in Section 11, Paragraph one or Section 13 of the Competition Law and they have been examined concurrently in one case, the amount of a fine shall be determined individually for each violation of a Clause of the respective Section. The final sum of the fine shall be calculated within the framework of the fine, which has been specified for the most serious violation.

25. If a market participant has committed the violations both referred to in Section 11, Paragraph one and Section 13 of the Competition Law and they have been examined concurrently in one case, the amount of a fine shall be determined individually for the violation referred to in each Section. The final sum of the fine shall be calculated within the framework of the fine, which has been specified for the most serious violation.

26. If more than five years have passed since the termination of a violation and the violation has not left a significant negative consequences on the market, the Council may impose a fine in the amount of LVL 250.

III. Release of a Participant of Horizontal Cartel Agreements from a Fine or Reduction of a Fine

27. The participant of a horizontal cartel agreement (hereinafter – cartel participant) has the right to address the Council with a written application regarding:

- 27.1. assigning the first sequence number for release from a fine;
- 27.2. release from a fine; or
- 27.3. reduction of a fine.

28. A cartel participant shall submit the applications referred to in Paragraph 27 of these Regulations at the Council in person to the Chair of the Council or authorised person thereof.

29. Until the taking of a decision regarding the determination of a violation, imposition of legal duty and fine (hereinafter – decision), the Council shall assign the status of restricted access information to the data identifying a cartel participant, which has submitted an application regarding release from a fine or an application regarding the reduction of a fine to the Council.

30. Information, insofar as it is known to the submitter of the application at the time of submitting the application, regarding cartel participants, the objective, nature and duration of operation of a cartel, the markets and geographic area of the relevant goods shall be indicated in an application regarding assigning the first sequence number for release from a fine.

31. A cartel participant shall be released from a fine if the following conditions are met:

31.1. the cartel participant upon its own initiative has been the first to submit an application to the Council regarding release from a fine. The following information shall be included in the application insofar as it is known to the submitter of the application at the time of submitting the application:

31.1.1. names and legal addresses of the submitter of the application and other cartel participants;

31.1.2. description of the cartel: the objective, principles of operation, the markets of the relevant goods, market volumes, duration of activities and geographic area;

31.1.3. evidence at the disposal of or available to the submitter of the application and other information related to the cartel regarding facts and conditions, which is sufficient for initiation of proceedings regarding violation of the prohibition of horizontal cartel agreement;

31.2. there is not sufficient evidence, on the basis of which proceedings might be initiated or a violation of the prohibition of horizontal cartel agreement might be determined, at the disposal of the Council at the time of receipt of the application; and

31.3. the submitter of the application:

31.3.1. prior to submitting the application, has not destroyed, forged or hidden evidence related to the cartel;

31.3.2. has not been the initiator of the cartel and has not performed activities in order to force other market participants to participate in the cartel or to continue participation therein;

31.3.3. after submitting the application has immediately terminated participation in the cartel if the Council has not specified otherwise;

31.3.4. upon its own initiative or upon a request of the Council, has provided all evidence at the disposal thereof or available thereto and other information related to the cartel regarding facts and conditions, has truly, actively and continuously co-operated with the Council from the time of submitting the application until the taking of a decision; and

31.3.5. has not disclosed the fact regarding submitting the application and co-operation with the Council in relation to an investigation of a violation of the prohibition of the horizontal cartel agreement to the other cartel participants or other persons.

32. An application regarding release from a fine shall be appended a written certification that a cartel participant:

32.1. has submitted the application upon its own initiative;

32.2. has provided all the information and evidence regarding the cartel, which is at the disposal thereof or available thereto at the time of submitting the application;

32.3. prior to submitting the application has not destroyed, forged or hidden evidence that is related to the cartel;

32.4. has not been the initiator of the cartel and has not performed activities in order to force other market participants to participate in the cartel or to continue participation therein;

32.5. has not disclosed information regarding co-operation with the Council to the other cartel participants or other persons;

32.6. undertakes to submit to the Council all the information and evidence regarding the cartel at the disposal thereof or available thereto without delay; and

32.7. undertakes to truly, completely, actively and continuously co-operate with the Council from the time of submitting the application until the taking of a decision by the Council.

33. A cartel participant, which may not apply for release from a fine, may submit an application regarding reduction of a fine. The fine shall be reduced if the submitter of the application conforms to the requirements specified in Sub-paragraphs 31.3.1, 31.3.3, 31.3.4 and 31.3.5 of these Regulations and the written application appended to the application regarding reduction of the fine conforms to the requirements of Paragraph 34 of these Regulations to the following extent:

33.1. to the cartel participant, which was the first to submit the application regarding reduction of the fine, – in the amount of 30 to 50 per cent; and

33.2. to other cartel participants, which submitted the application regarding reduction of the fine – in the amount of 20 to 30 per cent.

34. An application regarding reduction of a fine shall be appended a written certification of a cartel participant, in which the information referred to in Paragraph 32 (except Sub-paragraph 32.4) of these Regulations is included.

35. The Council shall, within five working days after receipt of applications, notify a submitter of the application regarding acceptance of the application or a refusal to accept the application. The reasons for a refusal shall be indicated in a notification regarding the refusal to accept an application.

36. The date and time of receipt of an application shall be indicated in the notification referred to in Paragraph 35 of these Regulations. In addition the date and time, until which an applicant submits a written application regarding release from a fine pursuant to the requirements specified in Sub-paragraph 31.1 and Paragraph 32 of these Regulations, shall be indicated in a notification regarding assigning a sequence number in the queue of submitters of applications for release from a fine.

37. If the Council has accepted an application of a cartel participant regarding assigning the first sequence number for release from a fine and an application regarding release from a fine has been submitted within the time period specified by the Council, it shall be deemed that the application was submitted and accepted for examination on the date when the application regarding assigning the first sequence number for release from a fine was submitted.

38. The Council shall not accept an application if the application does not conform to the requirements of these Regulations. Non-acceptance of an application shall not be an obstacle for re-submission thereof to the Council after the elimination of deficiencies.

39. A cartel participant, which has submitted or plans to submit an application to the European Commission regarding release from a fine for potential violation of the competition rights of the European Union, shall submit to the Council a summary regarding release from a fine (hereinafter – summary of application). The information referred to in Sub-paragraphs 31.1.1 and 31.1.2 of these Regulations, as well as information regarding such European Union Member States where evidence regarding cartel is present and information regarding other applications, which have already been submitted or which are planned to be submitted, including regarding summaries of an application regarding release from a fine, shall be included in the summary of application.

40. The Council shall, not later than within five working days after receipt of the summary of application, notify a submitter of the summary of application regarding acceptance of the summary of application or a refusal to accept it. The reasons for a refusal shall be indicated in a notification regarding refusal to accept a summary of application.

41. The date and time of receipt of a summary of application and whether the submitter of the summary of application has been the first to submit an application regarding release from a fine shall be indicated in the notification referred to in Paragraph 40 of these Regulations.

42. The Council may request additional information from a submitter of a summary of application, specifying the date and time for submission thereof.

43. If the Council takes a decision regarding initiation of proceedings regarding potential violation of the competition rights of the European Union on the basis of information in the summary of application, the Council shall notify the date and time, by which the submitter of the summary of application must submit a written application regarding release from a fine pursuant to the requirements specified in Sub-paragraph 31.1 and Paragraph 32 of these Regulations.

44. If the Council has accepted the summary of application of a cartel participant and an application regarding release from a fine has been submitted within the time period specified by the Council, it shall be deemed that the application was submitted and accepted for examination on the date of submitting the summary of application.

45. The Council shall approve or reject an application of a cartel participant regarding release from a fine or reduction of a fine with the same decision, with which the violation referred to in Section 11, Paragraph one or Section 13 of the Competition Law is determined, legal duty and fine is imposed.

46. Information regarding the identity of market participants co-operating with the Council shall not be included in the decision of the Council regarding non-determination of a violation of the prohibition of a horizontal cartel agreement and termination of proceedings.

Prime Minister

I. Godmanis

Minister for Economics

K. Gerhards