

Exclusion from a procurement procedure

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Considering the substantial harm to competition and the public at large caused by certain breaches of competition law, in order to diminish the willingness of market participants to enter into cartel agreements, including with respect to participation in procurement, [Section 39.¹ of the Public Procurement Law](#) and the [Section 42 of the Law on the Procurement of Public Service Providers](#) provide for

the exclusion of candidates or applicants from the procurement procedure where the candidate or applicant, pursuant to a decision of a competent authority or a court judgment that has entered into effect and may no longer be appealed, has been found guilty of a violation of competition law, taking the following form:

1. A vertical agreement that seeks to restrict the option of a buyer to determine the resale price

As part of such an agreement, the supplier restricts the ability of the buyer to determine the price independently, e.g. by setting a minimum or fixed resale price. It should be remembered that a supplier is entitled to set a maximum or recommended sale price provided that the parties to the agreement do not thus introduce a specified or minimum sale price in a concealed way through their actual actions.

2. A horizontal cartel agreement, such as:

the direct or indirect fixing of prices and tariffs in any manner or the provisions for their formation,
such exchange of information as relates to the prices or conditions of sale,
restriction or control of the volume of production or sales, markets, technical development, or investment,
the allocation of markets, taking into account territory, customers, suppliers, or other conditions,
participation or non-participation in competitions or tendering procedures or regarding the regulations of such activities (inaction).

A prohibition (exclusion from procurement procedures) remains in force for a year following the date the decision establishing the violation takes effect.

The above prohibition is not applied in cases where the competent authority, having detected a violation of competition law, has exempted the candidate or applicant from a fine.

Competent authorities that may take a decision regarding violations of competition law

In this particular instance, a competent authority denotes not only the Latvian Competition Council, but also the competition authorities of other countries, such as the competition authorities of the EU Member States that have applied the national competition law or Article 101 of the Treaty on the Functioning of the European Union, as well as the European Commission and the competition authorities of the European Free Trade Association member states.

It should be noted that the Competition Law and the competition provisions included in the Treaty on the Functioning of the European Union may also be applied by the national courts of the Member States.

Information regarding competition law violations committed by companies

The decisions adopted by the Competition Council may be viewed on the Competition Council website, in the section on [Competition Council decisions](#). Information on whether a decision has taken effect or is subject to court proceedings, as well as on the results of court proceedings, is also available there.

Decisions by the European Commission may be accessed on the [Directorate General for Competition website](#)

Judgments of the European Union Court of Justice may be reviewed on [the Court's website](#)

If the actions of a specific market participant have been found to be in violation of Section 11 of the Competition Law or Article 101 of the Treaty on the Functioning of the European Union, one should note whether indeed the particular violation took the form of a vertical agreement that seeks to restrict the ability of a buyer to determine the resale price, or a horizontal cartel agreement, information regarding which must be included in the decisions and judgments

An exception for participants of the leniency programme

In order to promote the use of the leniency programme, exclusion from procurement procedures is not applied to a participant of the leniency programme that was the *first* to apply for an exemption from a fine, and has been exempted from one pursuant to a decision by the Competition Council.

According to Cabinet Regulation No 796 of 29 September 2008 '[Procedures for the Determining of Fines for Violations Referred to in Section 11, Paragraph one and Section 13 of the Competition Law](#)', an exemption from a fine for the violation of a cartel agreement may be granted to the market participant that was the *first* to apply for an exemption from a fine, notifying the Competition Council of the cartel and cooperating in the investigation of the corresponding violation.

<https://www.kp.gov.lv/en/exclusion-procurement-procedure>