

Substantial harm to competition

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The notion of “substantial harm to competition” is an open-ended legal concept which, in order to be applied in a specific instance, is given certain content in accordance with the meaning and objectives of the Competition Law

The burden of proof of a substantial harm to competition is on the market participant filing a submission regarding potential violations of the Advertising Law.

This means that the market participant whose rights or lawful interests have been harmed has the duty to submit to the Competition Council documented information demonstrating that the violation has caused or may cause substantial harm to competition. If no such proof is filed, the Competition Council may choose not to initiate a case.

Identifying whether harm is substantial

In assessing whether a violation is causing, or may cause, substantial harm to competition, a consideration is made of the conditions adversely affecting (hindering, restricting or distorting) competition in that particular market, that are or may be caused by the violation in question, such as:

The number of market participants affected (harmed) as a result of the violation

The size of the market share of the violator and the harmed market participants in the particular market, including the size of the turnover of the goods directly affected by the advertising reduction in market shares

The purpose of consumption and properties and significance to consumers of the goods whose turnover is or may be reduced as a result of the violation

The manner and duration of distribution of the banned advertising

The amount of losses caused to the party harmed by the violation

In assessing the harm to competition, it is also possible to consider other specific circumstances of the particular case which have or may have an impact on competition in the relevant market.

The harm to competition is usually insubstantial if the private economic interests of one or no more than two market participants in the particular market have been harmed as a result of an unlawful offence.

<https://www.kp.gov.lv/en/substantial-harm-competition>