Court: parent companies may be responsible for competition infringements of subsidiary companies

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On 17 May, the Supreme Court adopted the decision, pursuant to which it is stipulated in the competition law of Latvia that parent companies may bear joint responsibility for infringements of competition law committed by subsidiary companies. That means that also in the future in cases of competition infringements the Competition Council of Latvia (the CC) will be entitled to impose responsibility upon parent companies regarding infringements committed by subsidiary companies.

In 2014, the CC established that several merchants included in the Moller group systematically agreed their participation in procurements during at least five years. The CC established in the decision that these subsidiaries did not perform their activities independently from their parent companies, therefore the authority determined the joint responsibility for several parent companies – Moller Auto Baltic AS, Harald A.Moller AS and Heinz Wilke Autohandel Gmbh. The CC applied joint responsibility to parent companies in the decision, upon establishing 100 % share of them in subsidiaries.

The Administrative Regional Court, when reviewing the application of parent companies regarding unreasonable determination of joint responsibility, satisfied the application and cancelled the decision of the CC in a part. It was stated in the judgment that the Competition Law does not provide for joint responsibility for infringement of competition law for the company which is not the direct offender.

The Supreme Court, when reviewing the cassation complaint of the CC, cancelled the judgment of the Administrative Regional Court and considered that the analysis included in the judgment are wrong and insufficient. Namely, the subject of the Competition Law is a market participant, which is a person performing commercial or economical activity, regardless of the legal form of the economical unit. Thus, the subject of the Competition Law is also the parent company. It should be highlighted that such assessment is confirmed also by the Court of Justice of the European Union, the conclusions of which shall be applied to the interpretation of the Latvian legal framework.

Māris Spička, the Executive Director, says: “Judgment of the Supreme Court dispels any uncertainties on whether the parent company is responsible for infringements of competition law committed by a subsidiary. It should be added that it corresponds also with the long-term understanding on the application of the competition law of the European Union. We hope that the judgment of the court will encourage subsidiaries in Latvia to reassess the current procedure of supervision, in order to ensure compliance with competition regulations within the framework of the whole group of companies.”

Besides, the Supreme Court has found incorrect also the conclusion of the Administrative Regional Court regarding the need for the CC to prove that the parent and subsidiary companies create one market participant, in case of establishment of 100 % share of the parent company.

The Supreme Court has also explained that the regulation covered by the Competition Law is sufficient, therefore it does not find any substantiation that the Latvian courts would miss legal grounds for application of responsibility to a parent company. Therefore there are no grounds for the statement that the current regulation of competition law would conflict with the Constitution.

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