

# Competition protection in Latvia: year 2016 in numbers and facts

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News

The Competition Council of Latvia (the CC) has summarized operating results of the authority and main conclusions on competition and competition protection in Latvia. In the previous year, the CC adopted in total six decisions, imposing fines in total amount of 1 657 196.70 euros on 16 undertakings. Five cases involved infringements of competition law, whereas another fine was imposed for failure to execute lawful requests of officials of the CC.

In 2016, 4'867'133.87 euros were paid into the state budget, which constituted the fines previously imposed by the CC. Undertakings pay fines, when legal proceedings concerning a decision of the CC are closed, if a decision is appealed or when the authority concludes an administrative agreement with the offender.

**Bid-rigging schemes in public procurements – still the most frequently detected infringement**

In the last year, the CC adopted five decisions on the most severe infringement of competition law – prohibited agreements. On three instances the authority detected bid-rigging in public procurements, and in total 12 companies were imposed fines in the amount of 294'833.45 euros. Two cartel agreements were implemented in total in 34 construction procurement procedures, whereas another one – in four different procurements of medical devices. In two cases the CC decided to close investigation of a case, because the amount of gathered evidence was insufficient to detect any infringements.

By exercising the rights of the CC determined in the Competition Law to prioritize its activities, on six similar, but smaller scope or significance occasions of alleged prohibited agreements, the CC issued warnings to 21 persons, without initiating formal case investigation.

In the previous year, the CC continued training procurement organizers on how to recognize signs of prohibited agreements. After receiving applications of procurement organizers, the CC initiated six cases on alleged suspicion of cartel agreements.

**Restoring of credibility – an opportunity for cartel participants to mend their ways and participate in procurements**

The companies that the CC has fined for involvement in prohibited agreements, are imposed with a fine and a 1-year prohibition to participate in public procurements. However, starting from the previous year, these companies are given an opportunity to restore their credibility and participate in procurements. Namely, if a company admits its fault and executes a range of requirements, including education of employees on detection of competition infringements, and implements activities to ensure, that a similar infringement will not be allowed in the future, the fined company is entitled to obtain a positive opinion of the CC to be eligible for participation in procurements.

In the previous year, the CC assessed credibility restoration activities implemented by eight undertakings.

**Abuse of market power by dominant companies**

In 2016, the CC adopted two decisions concerning abuse of dominant position by three companies, imposing fines in the total amount of 1'349'187.90 euros.

Also in the case of alleged suspicion of abusive conduct by dominant companies the authority is entitled not to initiate an infringement case and solve smaller infringements through negotiation procedure. By applying this method, the CC prevented four cases of market power abuse by dominant companies and solved one possible infringement of the Advertising Law in the last year.

**Mergers and notified cooperation agreements of undertakings in 2016**

In the previous year, the CC examined 12 mergers all of which were allowed, because no harm was detected to competition. The

CC also examined and allowed two notified agreements of companies, which allowed companies to make their activities more efficient and strengthen their competitiveness.

Also the merger control was improved by adopting amendments to the Competition Law. Namely, the reporting criteria of large merger transactions were changed by excluding the market share criterion, and also a state fee for assessment of mergers was introduced. As a result, the merger participants paid 44'000 euros into the state budget in 2016.

In order to facilitate preparation of merger notifications by undertakings that are planning a merger, the CC provides an option to receive consultations from the authority before submission of a notification. Thus, the CC provided 34 pre-merger consultations to companies in 2016.

Increasingly topical competition problem – competition harm caused by the state and local governments

At the end of 2016, the CC carried out a public opinion study, surveying companies, associations, legal offices and local governments. Respondents indicated competition distortions caused by public persons – the state and local governments – and bid-rigging as two the most widespread competition problems in Latvia.

Regulatory enactments that create groundlessly unequal competition conditions, or discrimination and giving unjustified advantages to own companies are the ways, how public persons distort competition and environment that is favourable for investment.

In the previous year, the CC discovered 28 cases of potential competition risks, caused by the regulatory framework. One of such competition risks in 2016 was an intention to entrust performing of dog chipping also to inspectors of the Food and Veterinary Service, thereby allowing the state to participate on the market, where the private sector is able to freely ensure provision of this service. After objections of the CC, these planned amendments were not adopted.

In order to reduce the competition distortion risk caused by public persons, starting from 1 January 2016, they are obliged to consult with the CC in two instances – when it is planned to establish own capital enterprise or reconsider participation in a capital enterprise. Thus, the CC has given its opinion in seven instances in the last year.

Changes and topicalities of regulatory framework

On 15 June 2016, amendments to the Competition Law were adopted, which significantly modernized application of competition law in Latvia. These amendments extended opportunities and rights of entrepreneurs and increased the authority of the CC and its opportunities to prioritize and concentrate own resources specifically for investigation and elimination of most severe infringements.

To strengthen the facilities of the CC to more efficiently address activities of public persons, which distort competition, discriminate and create unjustified advantages to particular market participants, the work on new amendments to the Competition Law was started in the previous year.

In its turn, on 1 January 2016, the Unfair Retail Practice Prohibition Law came into effect, which is aimed for achieving balance between the power of retailers and suppliers. Throughout the previous year, the CC actively educated entrepreneurs on the application of this law in practice, thereby providing almost 400 inquiries and explanations. In the middle of the year, the CC also made first corrections in terms of application of this law, which concerned returning of non-food products, whereas currently the CC analyses information on the first year of applying this law.

Legal proceedings

12 legal proceedings on appealed decisions of the CC were closed in the last year, in ten instances the decision of the CC were upheld, including after conclusion of an administrative agreement or settlement.

Among the most significant court decisions has to be mentioned the decision of the Supreme Court to leave effective the decision

of the CC to impose a fine on AS "Latvijas Gāze" for abuse of dominant position, preventing new customers from conclusion of an agreement, before they have paid debts of previous users. The company paid 2.2 million euros into the state budget in the last year for competition distortion.

The Supreme Court also upheld the decision of the CC on abuse of dominant position by VAS "Latvijas Pasts". A fine of 12'000 euros was imposed on the company for creating unjustified competition advantages for its subsidiary SIA "Mailmaster".

Promotion of competition culture – to achieve less infringements

In order to prevent infringements of competition law, the CC actively educates various target groups – entrepreneurs, organizers of procurements and students. In the previous year, the CC organized and participated in almost 20 activities, where people were informed about the operation of the authority and on how companies can avoid implementation of prohibited agreements through mutual cooperation, and how to recognize alleged bid-rigging in public procurements.

In order to draw attention to competition problems existing in different sectors, the CC organized a conference at the end of the last year, where it discussed problem issues, discovered during the sector inquiry into the market of household waste management market, and encouraged a discussion among sector professionals for solving these problems. Meanwhile, for studying and exchange of competition law practice the CC organized the annual Lawyers' Forum in the previous year.

Moreover, the CC participated in four sectoral events in the previous year, where the authority expressed its opinion on the development of competition on various markets.

Appreciation of activities of the authority – in Latvia and internationally

In the last year, the Cabinet of Ministers awarded the CC with a Certificate of Appreciation "for the results of the authority in detection of infringements of competition law and promotion of free competition". In 2016, the CC was the only public authority, which received appreciation from the government.

The CC also continued to receive international appreciation. In the previous year, the authority was included in the prestigious Global Competition Review Rating Enforcement rating of leading competition authorities for the second consecutive year. In the review of Latvia, included in the publication, it is indicated, that, taking into consideration its limited financial resources and staff, the Competition Council of Latvia has been excellent in performing entrusted tasks in implementation of the competition policy. The CC is characterized as one of the most efficient ("head and shoulders above") state administration institutions, emphasizing in particular the professionalism of employees, flexibility in solving of various issues, responsiveness and operational cooperation.

Whereas the Chairwoman of the CC Skaidrīte Ābrama was included for the first time in the list Women in Antitrust 2016, compiled by Global Competition Review, thus being listed among the most notable women in the world, who operate in the area of protection and application of competition law.

For media inquiries

Paula Vilsone  
Communications Officer of the  
Competition Council of Latvia  
E-mail: [paula.vilsone@kp.gov.lv](mailto:paula.vilsone@kp.gov.lv)

<https://www.kp.gov.lv/en/article/competition-protection-latvia-year-2016-numbers-and-facts>