

The CC establishes issues in the procedure for application of contractual penalties between retailers and suppliers during the COVID-19

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News



The Competition Council (CC), [when performing market study](#), established that there is a significant issue existing in the retail sector during the COVID-19 emergency situation in the activities of retailers related to application of unfair and unreasonable sanctions and return of goods. Compliance with such provisions is of especial importance during the COVID-19 emergency situation. Based on the Unfair Retail Trade Practices Prohibition Law (URTPPL), such activity of retailers is to be considered as unfair and prohibited.

The purpose of the market study was to identify the possible cooperation issues between retailers and suppliers during the “first wave” of COVID-19 or in the emergency situation from 12 March to 9 June 2020, assessing in depth the sanctions applied by retailers and cases of return of goods.

During the market study the CC established that the cooperation agreements between retailers and suppliers included different conditions for imposing of sanctions on promotional and non-promotional products, besides the agreements provided for a specific applicable contractual penalty in monetary terms, in euros, rather than the contractual penalty in percentage, arising from the non-delivered volumes. Meanwhile, the URTPPL provides uniform requirements for application of sanctions for both, promotional products as well as non-promotional products, besides, in accordance with the law, the amount of sanctions for improper fulfilment or non-fulfilment of obligations at the right time shall not exceed 10% of the amount of the principal debt or obligations. The CC reminds that the applied sanctions should be fair and proportional with the violation of the particular transaction and expected losses.

Upon analysing the information included in the cooperation agreements, the CC concludes that retailers have applied sanctions repeatedly for ordered, but not delivered quantity of goods. The CC emphasizes that such practice of retailers, when repeated contractual penalty for non-delivered goods is applied, shall not be considered as fair and reasonable, in particular as a result of interruptions in logistics caused by the COVID-19 emergency situation, when restrictions in transportation services affect also

availability of products on the market.

The study revealed also non-conformities in multilateral agreements, concluded between the suppliers, the retailer and distribution service provider, as well as in the agreements, concluded between the supplier and distribution service provider. The CC reminds that retailers that use the services of other merchants, bear direct responsibility for the activities performed by hired employees and companies. Thus, it is the duty of retailers in their activity not only to comply with regulatory enactments, but also to ensure control mechanisms and good management of the company, making sure that the attracted service providers comply with the provisions of the URTPPL.

In terms of return of goods, the CC found during the market study that not all retailers ensure that the return of goods of bad quality are confirmed with signatures of both parties. The CC recommends retailers to ensure traceability of goods, which have been considered to be in bad quality, through a transparent procedure, thus avoiding the risk of failure to comply with the requirements of the URTPPL.

The CC will study also the activities implemented by retailers with regard to suppliers also in the future, in order they would be in compliance with the provisions of the URTPPL, recommending retailers to comply with the terms and conditions of the URTPPL in good faith.

<https://www.kp.gov.lv/en/article/cc-establishes-issues-procedure-application-contractual-penalties-between-retailers-and-suppliers-during-covid-19>