

Latvia

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Legislation and jurisdiction

1 What is the relevant legislation and who enforces it?

The relevant legislation is the Republic of Latvia Competition Law (the Competition Law). The Republic of Latvia Competition Council (the Competition Council) investigates mergers and other concentrations.

The Competition Law applies to all market participants in Latvia, ie any persons (also foreign persons) who perform or intend to perform business activities in the territory of Latvia or whose activities have or may have an impact on competition in the territory of Latvia.

2 What kinds of mergers are caught?

As defined by the Competition Law, a merger occurs if one of the following is contemplated:

- the merger of two or several independent market participants for the purpose of becoming a single market participant (concentration);
- the accession, or joining together, of one market participant to another market participant (accession); or
- circumstances when one or several market participants acquire all or any part of the assets of another market participant or the rights to use them, or acquire a decisive influence (control) over another market participant or other market participants,

3 Are joint ventures caught?

Yes. In accordance with the Competition Law, the establishment of a joint venture (where, after merger, the market participant is subject to joint decisive influence) will also be subject to merger control. Joint decisive influence is deemed to occur in cases where two or more market participants can exercise their control over another market participant only jointly.

4 Is there a definition of 'control' and are minority and other interests less than control caught?

The definition of control is given by Article 1 of the Competition Law. The controlling situation arises in the case where one market participant has the possibility, directly or indirectly, to:

- control (regularly or irregularly) the taking of decisions in supervisory or executive bodies of another market participant through their shareholding or without it; and
- appoint such numbers of members in the executive or supervisory body of another market participant, which

ensures for the wielder of control a majority of votes in the relevant body.

The obligation to notify only arises in those cases in which an undertaking (natural person or legal entity) acquires control over another undertaking. Therefore, if a minority interest is acquired in a market participant which does not ensure the possibility of exercising control within the meaning of the Competition Law, then such an acquisition will not be subject to merger control rules.

5 What are the jurisdictional thresholds?

Pursuant to Article 15 of the Competition Law, the market participants who desire to merge in the meaning described above must submit a notice to the Competition Council if one of the following conditions applies:

- the total turnover of merger participants has in the last financial year exceeded LVL25 million (approximately €35,7 million); or
- the total market share in the relevant market of the market participants involved in the merger exceeds 40 per cent.

The total turnover of any party to the merger is calculated as the aggregate income from the products sold and services provided by that party in the field of its main business during the last year from which sales discounts, value-added tax and other taxes directly related to the turnover are deducted. It should be noted that the total turnover of the market participants that intend to merge is calculated within the Latvian jurisdiction only.

Market share threshold, based on the current practice of the Competition Council, is met in the following situations:

- merger participants operating in a particular product market with their joint market share in the respective market exceeding 40 per cent;
- one of the merger participants having a market share exceeding 40 per cent in any product market in Latvia. In the latter situation it is not necessary that other parties to the merger operate in the same product market. The threshold is met where any of the parties has a high (more than 40 per cent) market share in any market in Latvia.

6 Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Merger filing is mandatory, provided that the notification thresholds described in the Competition Law are satisfied.

The obligation to notify does not apply in the following circumstances:

- Credit institutions or insurance companies whose main activity includes transactions with securities (at their own expense or at the expense of others) have time-limited ownership rights to the securities of the market participants which they have acquired for further sale if the said credit institutions or insurance companies do not exercise the voting rights created by the said securities in order to influence the competing activity of the relevant market participants; or exercise the voting rights created by the said securities only in order to prepare investment of the market participant, its shares, assets or the relevant securities, and this investment is made within one year after acquisition of the voting rights. The Council may extend this term upon application of the respective credit institution or insurance company, if it proves that the relevant investment was impossible during the year.
- In the case of insolvency or liquidation of the market participant, the liquidator or administrator obtains the decisive influence over the respective market participant.

7 Are foreign-to-foreign mergers caught and is there a local effects test?

Foreign-to-foreign transactions must be notified if the thresholds are exceeded and the parties of the merger are market participants in Latvia. According to the definition of a market participant contained in the Competition Law, market participants are any persons (also foreign persons) who perform or intend to perform business activity in the territory of Latvia or whose activities have or may have an impact on competition in the territory of Latvia. There is no specific local effects test in Latvian merger control legislation.

The notification and review process

8 What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

The Competition Law states that direct participants of the merger must submit the merger notification prior to the merger, if such merger qualifies under the notification criteria.

A merger that has taken place without a merger notification having been submitted pursuant to the Competition Law is illegal. Failure to submit a merger notification, or consummation of a merger in contradiction with a decision of the Competition Council, may result in a penalty of up to LVL1,000 (approximately €1,430) for each day, starting from the day of commencement of illegal activity, which amount shall be levied against the new market participant. Payment of the penalty does not excuse the market participant from the obligation to fulfil the provisions of the Competition Law and decisions of the Competition Council.

9 Who is responsible for filing and are filing fees required?

The notification must be submitted jointly by all participants in the merger, or by a person who has their written authorisation, and must be filed prior to the merger. In case a decisive influence (control) is acquired, the notification must be submitted by the acquirer of such influence.

Currently there are no filing fees.

10 What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

There is no mandatory waiting period enforced by the Competition Council with regard to mergers.

11 What are the issues and possible sanctions involved in closing before clearance?

Under Latvian competition law penalties are applicable only where the closing of the merger is done prior to the filing of full notification or where the closing is done prior to the decision of the Competition Council, according to which the merger is prohibited or permitted with binding provisions for the relevant market participants. Accordingly, the closing of a merger may be done after the submission of the full notification and prior to the decision of the Competition Council by which the merger is approved without additional binding provisions. In such a scenario no penalties would be applied to the new market participants. Please note however that there is always a risk that the merger might be prohibited or approved with binding provisions. The parties to the merger should be aware of this risk while considering the closing prior to the decision of the Competition Council. The fine for an unauthorised merger is up to Ls1000 per day, from the day when the notification should have been submitted.

12 Are there any special merger control rules applicable to public takeover bids?

The Competition Law does not make special provision for public takeovers, except for those which apply to credit institutions and insurance companies as described in 6 above.

13 What is involved in and how detailed is the preparation of a filing?

The merger notification should contain a description of the parties which participate in the merger, an overview of the legal and financial aspects of the merger, a description of the specific markets defined by the Competition Law which may be affected as a result of the merger, and the statement of purpose for the planned merger transaction. The following supplementary information is included in the merger notification: the purpose of the merger agreement; specific provisions contained in the agreement which may prohibit, limit or distort competition as a result of which this agreement may be declared invalid under the Competition Law; any adverse consequences foreseen which may be caused to competition; and the positive effects resulting from the merger agreement.

In accordance with the requirements of the Competition Council, information regarding the specific markets should also be included in the merger notification, stating the particular product markets in respect of which the merger analysis should be based, related enterprises which operate in each such market or operate in the markets which are closely located to each market, the market share of each party to the merger, as well as the five main competitors of the parties to the merger agreement, their market share and five main clients in those particular markets in which the total market share of all parties to the merger exceeds 15 per cent.

The Competition Council also recommends that there should be stated any provisions of the agreement which limit the rights of the parties to the agreement to independently adopt commercial decisions relating, for example, to the following:

- Sale or purchase prices, discounts or other commercial provisions

- Quantity of goods manufactured or sold or amount of services offered
- Technical development or investments
- Choice of markets or supply sources
- Transactions with third parties
- Application of identical or differing conditions to the supply of goods or rendering of services, or simultaneous offering of identical or differing services

14 What is the timetable for clearance and can it be speeded up?

After receipt of a complete notification (according to the requirements set by the Cabinet of Ministers) the Competition Council will within 30 days adopt one of the following decisions:

- Prohibit the merger
- Permit the merger on certain conditions
- Permit the merger
- Commence an in-depth investigation

If the Competition Council has decided to commence an in-depth investigation, its final decision shall be adopted within four months from the date of submission of the complete notification. If the parties have not received any information from the Competition Council within four months of submission of the notice, the relevant merger of market participants shall be deemed to be permitted.

The Competition Law does not provide for any circumstances in which the Competition Council will carry out an expedited review of a merger notification.

15 What are the typical steps and different phases of the investigation?

The Competition Council must inform without delay the applicants of any insufficiency in the merger notification, and set the deadline for submission of any missing information. The date of submission of requested additional (missing) information will be considered as the date of submission of the complete notification.

Any change of information which is known or ought to be known to the applicants in connection with the merger notification should be forwarded to the Competition Council without delay. If the relevant changes could have material effect on assessment of the merger, the Council may state that the date of submission of the notification is the date when the full information regarding the relevant changes is received. The Council sends the applicant written notice to that effect.

After receipt of a complete notification (according to the requirements set by the Cabinet of Ministers) the Competition Council will within 30 days adopt one of the decisions mentioned in 14 above (first phase).

If the Competition Council has decided to commence an in-depth investigation, the second phase of investigation begins. The final decision shall be adopted within four months from the date of submission of the complete notification.

The substantive assessment

16 What is the substantive test for clearance?

The objective of the provisions on merger control in the Competition Law is to prevent the creation or strengthening of a dominant position or reducing of competition in any relevant market in order to ensure competition in the Latvian economy.

The Competition Council prohibits mergers as a result of which a dominant position is created or strengthened or where competition in any relevant market can be considerably reduced.

17 Is there a special substantive test for joint ventures?

Cases when, after the merger, the market participant will be subject to joint control (joint venture) and the consequences or the purpose of establishment of such market participant subject to joint control are or could be coordination of competitive activity of the market participants acquiring the joint control, are evaluated taking into account Article 11 of the Competition Law (prohibited agreements between market participants).

Upon evaluation of the said cases, the following is specifically considered:

- whether the market participants acquiring joint control perform significant economic activity on the same market where the market participant subject to joint control operates or will operate, as well as on the markets related to such market; and
- whether coordination of competitive activity which could be the direct effect of establishment of the market participant subject to joint control will create a possibility to liquidate competition in the considerable part of the relevant goods and services.

18 What are the 'theories of harm' that the authorities will investigate (eg, market dominance, unilateral effects, coordinated effects, conglomerate effects, vertical foreclosure)?

So far the Competition Council has mainly investigated market dominance of the parties to the merger. However, in complex cases the Council tends to follow the practice of the European Commission and it should be expected that other 'theories of harm' may be investigated in particular situations.

19 To what extent are non-competition issues (such as industrial policy or public interest issues) relevant in the review process?

Only competition issues are important in the review process. The Competition Council has no authority to consider anything but competition issues. The Competition Law expressly states that the Cabinet of Ministers or the minister of economics or other persons cannot give the chairperson of the Competition Council and its members instructions regarding the commencement of a review of the case under specific circumstances, how this review shall be carried out or a decision taken.

20 To what extent does the authority take into account economic efficiencies in the review process?

The objective of the provisions on merger control in the Competition Law is to prevent the creation or strengthening of a dominant position, or reduction of competition in any relevant market, in order to ensure competition in the Latvian economy. However, even in cases when dominant position of the enterprise establishes or is strengthened as a result of a merger, the Competition Council assesses efficiencies yielded by such merger, for instance, an offer of new services to consumers. In individual cases the Competition Council has considered that such positive benefits for consumers are a sufficient reason to allow a merger, which according to the law should be prohibited.

Remedies and ancillary restraints
21 What powers do the authorities have to prohibit or otherwise interfere with a transaction?

If the Competition Council has adopted a resolution to prohibit a merger, but the merger has taken place, the Competition Council may resolve to split the joint capital of the merger participants, to divest joint control or any other joint activity in order to restore the effective circumstances for competition.

Decisions of the Competition Council are binding on the market participants and their groups and shall be performed on a voluntary basis. If the decisions are not performed on a voluntary basis then they are executed by court bailiffs.

22 Is it possible to remedy competition issues, for example by giving divestment undertakings?

The Competition Council may impose restrictions or conditions on the clearance of a merger in order to prevent the creation or strengthening of a dominant position or to achieve at least some sort of improvement in competition. For example, the Competition Council may order divestment if this appears to be necessary. As of the time of this report, the Competition Council has applied the divestment provision on two occasions. Various other provisions have been applied several times when permitting the merger. The principles vary on a case-by-case basis, and current competition laws and regulations do not contain detailed requirements for the application of any particular conditions.

23 What are the basic conditions and timing issues applicable to a divestment or other remedy?

Currently, the laws of Latvia do not include any specific provisions that might be applied when determining binding regulations for market participants in case of a merger. The principles or guidance for divestment and other remedies vary from case to case.

24 What solutions (such as a local 'hold-separate' arrangement) might be acceptable to remedy local issues in a foreign-to-foreign merger?

The Competition Council may also grant a conditional approval of a foreign-to-foreign merger to remedy local issues. However, the principles or guidance for such remedies may vary from case to case, and current competition laws and regulations do not contain detailed requirements for the application of any such remedies. As of the time of this report, the Competition Council has not applied restrictions to foreign-to-foreign mergers.

25 What remedies have been required in foreign-to-foreign mergers?

As of the date of this article, the Competition Council has not required remedies in foreign-to-foreign mergers. All foreign-to-foreign mergers notified to the Council have been approved without binding provisions for the parties.

26 In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

There are no specific provisions in the Competition Law and related regulations which would cover the ancillary restrictions in case of merger. Currently, there is also no practice in this regard established by the Competition Council. However, considering

that the Competition Council strictly follows the EU law and Commission practice in similar cases, we would expect that the decision declaring the merger compatible will also be deemed to cover restrictions directly related and necessary to the implementation of the merger (ancillary restraints). The parties will need to apply their own judgement to the question whether a restriction is ancillary.

Involvement of other parties or authorities
27 Are customers and competitors involved in the review process and what rights do complainants have?

The Competition Council has the right to issue inquiry letters to other market participants, competitors and customers who may have a legitimate interest in the outcome of the merger. The Competition Council may also question professional organisations and associations to determine the scope of a particular product and geographical market of the merger participants.

A person whose rights or lawful interests are infringed by the relevant merger transaction and who is reasonably interested in prevention of violation may submit written application to the Competition Council. Application can be also submitted by a person involved in violation, ie a merger participant.

The application shall contain documentary information grounded on facts showing reasonable interest of a person in the prevention of violation of the law and measures taken to eliminate violation before the Competition Council has received the application. The Competition Council reviews the information contained in the application not later than 30 days after receipt of the application and adopts a decision on whether to bring any action. No action can be brought in cases if the information contained in the application is incomplete or the violation committed is insignificant.

28 What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

All information submitted to the Competition Council that is considered by the parties to the merger as confidential must be appropriately identified as such by the parties. However, the Competition Act provides that the decisions taken by the Competition Council shall be published in the official newspaper *Latvijas Vestnesis* no later than 10 days after the decision has been made. The publication excludes information which is of limited access (classified information). Classified information means the information which by law is granted this status, but it can also be the information which applies to business secrets and the author of this information itself has the right to grant this status to the relevant information (for example, it can be granted by a submitter of a merger notification).

Furthermore, the Competition Law mandates the responsibility of officials and employees of the Competition Council to observe confidentiality, and the Law further provides for compensation of damages to the market participants caused as a result of any unlawful acts of Competition Council officials and employees.

29 What is the recent enforcement record of the authorities, particularly for foreign-to-foreign mergers?

Taking into account the fact that the Competition Council has been reviewing foreign-to-foreign mergers only since 1 Janu-

ary 2002, when the new Competition Law entered into force, in Latvia there is currently insufficient practice in this regard. As of August 2006, the Competition Council had reviewed a number of notifications of foreign-to-foreign mergers which were all cleared without any restrictions.

30 Do the authorities cooperate with antitrust authorities in other jurisdictions?

An international agreement has been signed between competition authorities of Latvia, Estonia and Lithuania on mutual cooperation and development of antitrust enforcement policy. In addition, the Competition Council works in close cooperation with antitrust enforcement institutions of the European Union within the framework of the EC Regulation No. 1/2003.

Judicial review

31 What are the opportunities for appeal or judicial review?

Decisions by the Competition Council in merger cases can be appealed to the administrative district court within one month after date the Competition Council decision comes into force.

In accordance with the Administrative Procedure Law, the appealed administrative act (also a decision of the Competition Council as an administrative case) is reviewed at court. An administrative act at the court of first instance is reviewed on its merits by the administrative district court. After a complaint by the participant of administrative procedure regarding the judgment of the court of first instance, the case is heard on its merits at the court of second instance in the appeal procedure. The participant of the procedure can appeal the judgment of a court of second instance in the cassation procedure.

The essence of the administrative court proceedings is the court control over legality or efficiency considerations of the administrative act issued by the authority or actual actions taken by the authority within the scope of freedom to act. In the administrative proceedings the court, upon performance of its duties, itself (ex officio) objectively determines circumstances of the case and gives legal opinion in respect of them, reviewing the case within a reasonable term.

32 What is the usual timeframe for appeal or judicial review?

The decisions of the Competition Council in merger cases can be appealed to the administrative district court. Considering that the Latvian Competition Council has yet to prohibit a merger and has only on four occasions approved a merger determining bind-

ing provisions for the relevant market participants, there is little surprise that none of the decisions of the Competition Council in merger cases have been appealed. Administrative appeal cases are generally reviewed by the Administrative District Court within a time period ranging from 8 months to two years.

33 Are there also rules on foreign investment, special sectors or other relevant approvals?

Merger control regulations for banking and insurance business are separately enforced by the Commission for Supervision of the Financial and Capital Markets. Banks and insurance companies in case of a merger must submit to the supervising authority specific supplementary information on the planned shareholding structure and on the strategic investors having control over the merging parties, in order to obtain prior approval for such a merger. This requirement, however, does not preclude the Competition Council from reviewing the merger under general competition laws and regulations.

Enforcement practice and future developments

34 What are the current enforcement concerns of the authorities?

The Competition Council has prioritised the disposal of violations of prohibited agreements. The Council has declared that in regard to such activities, effective investigation instruments are to be introduced and implemented, along with a motivating policy of sanctions. Concurrently, there is ongoing work on carrying out measures to introduce and develop competition by facilitating the opening of the market in economic sectors where opportunities of gaining monopoly profit. The Competition Council particularly focuses on competition trends in the meat products market, grain products market, dairy products market, construction market, non-metal mineral products market, fish products market, transport and communications market.

35 Are there current proposals to change the legislation?

There are extensive amendments to the Competition Law currently under consideration in the Parliament of Latvia which should be adopted by the end of 2006. The current draft of the amendments among other provisions concerns also merger notification procedures and merger notification thresholds. However, at the time of preparation of this report it is not clear what the final draft of the amendments will look like and whether the amendments will substantially affect the current merger control regime.

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