

Latvia

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Introduction

- 1** What are the national laws and measures providing for enforcement of Articles 81 and 82?

In Latvia, enforcement of Articles 81 and 82 is regulated by the Republic of Latvia Competition Law (the Competition Law).

- 2** What additional national competition rules exist?

Competition rights in Latvia are regulated by the Competition Law and Cabinet of Ministers Regulations issued in relation thereto, which determine the manner of enforcement and specific procedures relating to certain provisions of the Competition Law.

- 3** Which national authorities are responsible for enforcing Articles 81 and 82?

In Latvia, compliance with the Competition Law is supervised by the Competition Council which is established by the Cabinet of Ministers and subordinate to the Ministry of Economics.

- 4** Which courts will hear cases and appeals concerning Articles 81 and 82?

Jurisdictional issues regarding which courts will hear matters based on competition rights are regulated by the laws of legal procedure.

Appeals of Competition Council decisions are reviewed at the administrative district court as a first instance court. A judgment of the court of first instance can be appealed at the court of second instance and these appeals are reviewed by the Regional Administrative Court. A judgment of the court of second instance takes effect as of the moment it is announced; however, it can still be appealed to the Senate of the Supreme Court of the Republic of Latvia, if any provisions of material rights or procedural laws are breached.

Those competition-related matters which are brought to court directly by a market participant are reviewed based on the civil procedure regulations and fall within the jurisdiction of either district courts or regional courts. This depends on the contents of the claim and the claim itself. If, for example, damages are claimed which exceed the amount of LVL30,000 (approximately €43,000) then this claim falls within the jurisdiction of the regional court. Judgments in these cases can also be appealed further.

- 5** Does national law include rules on abuse of market power which are stricter than Article 82?

The Competition Law states that any market participant who is in a dominant position is prohibited from abusing this position in any manner in the territory of Latvia. In addition to the forms

of abuse of a dominant position referred to in Article 82, the Competition Law also includes the refusal to enter into transactions with another market participant or the amendment of terms and conditions of a transaction with another market participant without objectively justifying the reasons.

The Competition Law defines the dominant position as a position in a relevant market of a market participant, possessing the following two characteristics:

- the market share of this market participant is at least 40 per cent; and
- this market participant has the ability to significantly hinder, restrict or distort competition for a sufficient length of time by acting with full or partial independence from competitors, clients or consumers.

National authorities

– complaints and enforcement based on Articles 81 and 82

- 6** What are the principal ways in which national powers of investigation and enforcement, and penalties for procedural non-compliance, differ from those of the European Commission?

The provisions of Latvian law regulating national powers of investigation and enforcement, as well as penalties for procedural non-compliance, are generally based on those of the European Commission. The main difference is that Latvian competition rules are not so detailed.

Legal professional privilege is available only to attorneys. According to Latvian legislation, legal privilege is not available to employed lawyers and non-EU qualified lawyers.

- 7** Can a third party challenge a decision by the authorities either formally or informally to close the file on a complaint?

If the Competition Council decides not to bring an action based on a person's complaint then it informs the applicant of the reasons for not bringing the action and the possibility of renewing the application after eliminating any deficiencies in the application or receiving additional information. In this event, if the case is not initiated, third parties do not have the right to challenge the refusal to initiate the case and they can only apply to the Competition Council with their complaint on the relevant issue.

If an action is brought, a third party (a person whose rights or legal interests could be affected by the decision in the relevant case) has the right to become acquainted with the case, express its opinion and submit additional information. In the event that the case is dismissed after it was initiated – for example, due to the lack of relevant facts – the Competition Council shall notify the applicant of the complaint and the third parties which were

invited to give their opinion on the case regarding the decision to dismiss the case. This decision can be appealed to court under the general procedure also by third parties whose interests have been infringed by the relevant decision.

8 In what other circumstances may the authorities reopen a file?

The Latvian Competition Law does not provide specific examples of when the authorities may reopen the file. In the event that the Competition Council has refused for any reason to bring an action (see 7 above), the applicant has the possibility of renewing the review of its application, either after eliminating deficiencies determined in the application by the Competition Council or after submitting additional information to the Competition Council. The already adopted decision of the Competition Council in respect of the specific case can be appealed only to court.

In accordance with the general administrative procedure, if the decision of the authority has become unappealable then the administrative procedure can be initiated anew in respect of the same case based on the application of the addressee, if at least one of the following conditions exists:

- the factual circumstances of the case which formed the basis for adoption of the decision have changed;
- the legal circumstances have changed in favour of the addressee; or
- the European Court of Human Rights or other international or cross-national court has adopted the decision from which it follows that the administrative procedure shall be started anew.

The administrative procedure can be started anew on the basis of an application of a third party, if the aggregate of the following circumstances exist:

- the factual or legal circumstances which formed the basis for adoption of the decision have changed in favour of this individual;
- the addressee has not yet exercised the rights which have been granted to him by the relevant administrative act.

9 To what extent can a complainant keep its identity confidential from the undertaking(s) being complained about?

The Latvian Competition Law does not provide for the possibility of submitting an anonymous complaint. In accordance with the Competition Law, a complaint can be submitted by a person who is validly interested in eliminating the violation. A validly interested person is a person whose rights or legal interests are or could be infringed as a result of the violation, as well as a person who is involved in the violation. The identity of the applicant of the complaint is not confidential information.

Practically speaking, it is possible to submit a complaint using the services of another person and not revealing the actual interested person. In this case the Competition Council may reject this complaint if the applicant is not the person who is interested in the case. However, if the information contained in the complaint regarding the violation is sufficient, then the Competition Council may institute proceedings on its own initiative.

10 Can the authorities start an investigation on their own initiative?

The Competition Council has a right to bring an action upon its own initiative. The Competition Council may bring an action if it becomes aware of any facts based on which a violation could be determined or if there is a reason to consider that such facts could exist.

11 What is the procedure for making a complaint and how is the complaint dealt with?

A complaint can be submitted by a person who is validly interested in eliminating the violation (see 9 above). The law sets strict requirements in respect of information to be included in the complaint:

- information regarding the persons involved in the potential violation;
- evidence proving the potential violation, based on which the application is made;
- provisions of the Competition Law which have been violated;
- facts which prove the valid interest of the person in the elimination of the violation of the law;
- measures taken for eliminating the violation before the Competition Council received the application.

The Competition Council, not later than within 30 days after receipt of the application (complaint), evaluates the information contained in the application and, if necessary, requires additional information to be provided, and makes a decision to bring an action or dismiss the case. The case can be dismissed if the information contained in the complaint is insufficient or the violation made is insignificant.

After initiation of the case, the Competition Council obtains information which is necessary to make a decision. The Competition Council makes its decision within a period of six months after the date the case was initiated. If for objective reasons the term of six months cannot be complied with, then the Competition Council may extend this term for a period not exceeding one year from the start date of the case. If continuous determination of the facts is required, the Competition Council can extend the term for adoption of the decision for up to two years.

Currently there are no fees for making a complaint.

12 How frequently do the authorities consult the Commission about their Article 81 or 82 cases, or transmit information about such cases to other national authorities?

At the time of preparing this chapter, the Competition Council has not considered any Article 81 and 82 cases. However, the Competition Council actively exchanges information with other national authorities through the International Competition Network.

13 Have the authorities been able to take proceedings and/or impose sanctions as a result of information received from the Commission or other national authorities? Have they made use of the possibility to ask authorities in other Member States to carry out inspections on their behalf?

Considering that Latvia is a comparatively new Member State, then currently the Competition Council has not yet adopted any decisions of determination of violations, based on the information received from the European Commission or other Member States. However, such an exchange of information is carried out and the Competition Council carefully analyses all reports of the competition authorities of other Member States on the possible competition consequences in Latvia. The Competition Council also informs the competition authorities of other Member States regarding the information at its disposal which could have any influence on competition in the territory of other countries.

National authorities – remedies

14 What are the maximum fines/sanctions national authorities may impose on undertakings for infringement of Articles 81 and 82?

For violation of Articles 81 and 82 the Competition Council can impose a fine on the market participants of up to 5 per cent of the net turnover of the last fiscal year in respect of each market participant, but not less than LVL250 (€360) for each. If a legally imposed obligation is not met, and in cases of entering into prohibited agreements among competitors, the Competition Council can impose a fine of up to 10 per cent of the net turnover of the last fiscal year in respect of each market participant, but not less than LVL500 (€715) for each.

15 Are fines imposed on foreign undertakings?

In accordance with the Competition Law, foreign natural or legal persons may also be considered market participants in Latvia if they perform or intend to perform business activity in the territory of Latvia or their activities have or could have influence on the competition in the territory of Latvia. Therefore, in accordance with the Competition Law, a fine can be imposed on a foreign undertaking as far as it can be considered a market participant in Latvia. In practice, taking into account the comparatively short history of the application of competition law in Latvia, there have been no cases where a fine has been imposed on a foreign undertaking.

16 Is there a national leniency policy?

Leniency/amnesty policy (full exemption) applies to horizontal cartels. The law also provides for the possibility to reduce the fines for other prohibited agreements and abuse of the dominant position if: the violation is duly terminated; the market participant has voluntarily eliminated the consequences thereof; and upon his/her own initiative has submitted to the Competition Council complete and true information or evidence which has been of material value in determination of the violation.

If a horizontal cartel agreement is determined then the Competition Council fully exempts the market participant from paying the fine for participating therein, if the market participant has cooperated with the Competition Council and the following conditions are met:

- the market participant, upon his/her own initiative, was the first to inform the Council about the horizontal cartel agreement in which he/she is involved, and at the time there was no information at the disposal of the Council which would allow for an inquiry into the possible violation or would determine the violation;
- the market participant has submitted to the Council all information and evidence available to him/her;
- the information and evidence submitted to the Council regarding the potential violation referred to in the Competition Law are sufficient for instituting an inquiry into the violation or determining the violation;
- during the entire course of investigating the violation the market participant has actively cooperated with the Council; and
- the market participant did not initiate the relevant prohibited agreement or did not have an important role in the prohibited activity, and has not induced other market participants to participate in the prohibited activity.

If an inquiry into a potential violation regarding the horizontal cartel agreement has already been instituted then the reduc-

tion in fines applicable to the market participants who, based on their own initiative, have submitted to the Council the information serving as material evidence in proving the relevant violation, is as follows:

- in respect of the market participant who was the first to submit the aforesaid information, from 50 to 90 per cent; however, the reduced fine shall not be less than LVL500 (€715). The Council reduces the fine if at the time of submission of the information the relevant information was not at the disposal of the Council and the market participant was not the initiator of the violation;
- in respect of other market participants, from 30 to 49 per cent; however, the reduced fine shall not be less than LVL500 (€715). The Council reduces the fine if at the time of submission of the information the relevant information was not at the disposal of the Council and the market participant was not the initiator of the violation.

The Competition Law also states that the fine can be reduced or exempted if the market participant has, upon its own initiative, notified regarding the following agreements between competitors, which are prohibited in Article 81:

- agreements on direct or indirect fixing of prices and tariffs in any manner, or provisions for their formation, as well as regarding such exchange of information as relates to prices or provisions regarding sale;
- agreements on restriction or control of the scope of production or sales, markets, technical development, or investment;
- agreements on division of markets, taking into account territory, customers, suppliers and other conditions;
- agreements on participation or non-participation in competitions or auctions or regarding the provisions for such actions (inaction).

17 What other factors affect the level of fines imposed?

The procedure for calculating fines for violations of the Competition Law is set out in special regulations of the Cabinet of Ministers.

In determining the amount of a fine, the seriousness and duration of the violation is considered. When determining the seriousness of the violation, the following factors are taken into account:

- type of violation;
- potential or actual consequences of the violation; and
- role of each market participant involved in committing the violation.

A small violation is deemed to be a vertical agreement or a horizontal cooperation agreement; a serious violation is deemed to be an abuse of dominant position or a vertical agreement on fixing the resale prices of purchasers; and an exceptionally serious violation is deemed to be a horizontal cartel agreement or an agreement which imposes restrictions on import or export of goods.

The amount of the fine can be increased if:

- the market participant repeatedly commits the same violation within a period of five years;
- it is necessary to increase the fine in order to exceed the income received from committing the violation; or
- it is determined that the market participant has directly or indirectly induced other market participants to commit violations.

The competition laws in Latvia do not directly provide for the possibility of reducing fines taking into account sanctions imposed in parallel proceedings and/or damage suffered in other jurisdictions.

18 Can behavioural or structural remedies be imposed?

In accordance with the Competition Law, upon determining the fact of violation the Competition Council has the right to impose legal obligations on the market participants, as well as a fine. The contents of these legal obligations are not regulated by law and the Competition Council determines them depending on the specific case. In the existing practice of the Competition Council these obligations have been in the form of an obligation to terminate the violation or to take necessary steps for the purpose of termination thereof, as well as an obligation to notify regarding payment of the fine.

19 In what circumstances will national authorities formally or informally accept commitments so as to close a file?

In Latvia, the Competition Law does not provide for the possibility of dismissing a case, based on the undertakings of the persons involved. Actions taken by the persons during the review of the case may influence the amount of a fine as, for example, the fine can be reduced if the market participant has terminated the violation, voluntarily eliminated its consequences and provided true and complete information to the Competition Council.

20 When will interim measures be ordered?

If there is evidence at the disposal of the Competition Council regarding possible violation of Articles 81 or 82, and non-termination of this could cause material and irretrievable damage to competition, then the Competition Council has the right to submit an application to court regarding interim measures.

Interim measures are applied and enforced in accordance with administrative procedure. In case of failure to comply with such measures, an administrative penalty is imposed on a person. To date, the application of interim measures is rather general because the regulations of the Cabinet of Ministers which would regulate their application, the consequences of non-application, and the rights of third parties to enforce interim measures have not been adopted yet.

21 What limitation periods apply to substantive and procedural infringements?

The Competition Law sets out the following limitation periods:

- for appealing decisions of the Competition Council, 30 days from the date of becoming aware of the decision;
- submission of information required by the Competition Council, usually seven days; and
- the term during which the participants have the right to become acquainted with a case and submit additional information, 10 days (the Competition Council may ignore information which is submitted after this time limit expires).

The law does not specifically provide for any limitation periods for substantive infringements.

National authorities – informal guidance**22** Is informal guidance available to businesses in specific cases and how is it given?

The Competition Council gives informal guidance to businesses in specific cases. This guidance can be requested in a letter to which the Competition Council, as any state institution, must respond in writing within 15 days.

23 Can exemption decisions be granted to agreements under national competition law?

In accordance with the Competition Law, the Competition Council may permit, or permit with conditions (individual exemption), agreements between market participants if it determines that the agreement promotes improvements in the production or sale of goods or economic progress and thereby benefits consumers and, in addition, this agreement:

- does not impose on the market participants concerned restrictions which are not necessary for achieving these objectives; and
- does not afford the possibility of eliminating competition in a substantial part of the relevant market.

National courts – remedies**24** Can a national court order anti-competitive conduct to cease, and can it order specific performance, eg grant of access to a network?

In accordance with the provisions of the Competition Law, cases which are related to violations of competition can be brought to court by means of an administrative procedure when the decision of the Competition Council is appealed. In this case, according to the Administrative Procedure Law, the administrative courts are entitled to:

- adjudicate the case on its merits, including to fully or partially cancel the contested administrative act or declare it invalid;
- amend the administrative act and determine the specific contents thereof, in cases provided for by law; and
- instruct the relevant institution to issue a favourable administrative act, specifying the contents and the date of issue thereof.

Therefore, the administrative court has the right to impose on the market participant a specific legal obligation or obligation to eliminate competition violations within administrative proceedings, and to take steps to correct the decision (administrative act) adopted by the Competition Council. Another alternative is for a market participant to bring a civil claim related to violation of competition provisions against the other market participant. In this case the court has the right to determine the violation of these provisions provided, however, that the court ruling can be issued only within the scope of the claim. This means that in a civil case the court cannot decide to impose an obligation on a market participant which has not been requested by the other party in the case, or adopt a judgment which can infringe the rights or interests of third parties.

25 Who can sue for damages or other remedies?

A claim for damages is a civil claim and therefore this claim can be filed at court by any person whose civil rights or interests protected by law are infringed or challenged. Class actions for damages can be brought; however, they are not popular in Latvia. More common are those cases where any public organisation or foundation is acting as a claimant on behalf of members of the public (for example, trade unions), but there is no precedent in the field of competition law.

26 What criteria will courts apply in awarding and calculating damages for infringement of Articles 81 and 82?

Recovery of damages is based on four criteria: the unlawful act of a person; the guilt of this person; the existence of damage and

its specific amount; and a causative relation between the illegal act and the damage. For a court to award damages, the claimant must prove the existence of all the aforementioned preconditions and therefore the burden of proof lies with the claimant. A passing-on defence is acceptable, since the procedural rules state that each party must prove those facts by which it substantiates its claims or objections; however, the defendant may choose between active and passive defence and he or she does not have an obligation to undertake the burden of proof while the claimant has not proved his or her claim.

The Latvian Civil Procedure Law states that facts which, according to the law, are deemed to be established do not have to be proved. Based on this provision, a finding of infringement by the Competition Council could be sufficient basis to consider any person guilty of a violation of any specific competition law. Thus a person who claims damages must only prove the damage that has been caused to the claimant and the causative relation between the damage and offence. If it has been determined in the decision of the Competition Council that specific persons have suffered from the relevant violation, then these persons would no longer need to prove the causative relation. The opposing party can challenge such assumptions and proof only in the general procedure. Punitive damages could not be awarded under normal circumstances.

When determining damages the court considers the evidence in the case and whether the damages have resulted from a contractual or non-contractual relationship. A loss can be either a diminution of the victim's present property or a decrease in his or her anticipated profits. If damages are caused in a non-contractual relationship by the unlawful act of a person then the person who caused the damage shall be liable for all losses, ie both diminution of present property and decrease in anticipated profits. If damage results from a violation of contractual obligations then the amount of compensation is determined by the contents of the relevant contract, but if the contract does not contain any specific regulation in respect of recovery of damages then all damages can be claimed (in the same manner as in a non-contractual relationship).

27 Is an interim injunction available from the courts?

Cases which are related to violation of competition laws can be brought to court either by administrative or civil procedure. In civil procedure an interim injunction can be issued as a security for the claim, however, the claim can be secured only in case of material and property claims or if there is a basis to consider that enforcement of a judgment in the case could be burdensome or even impossible.

In the administrative procedure an interim injunction is possible, based on the Competition Law and on the Administrative Procedure Law. The Competition Law states that the Competition Council can adopt a decision for an interim injunction if it has at its disposal any evidence of a potential breach of EU Competition regulation, and that failure to cure this breach can result in material and irretrievable damage to competition. In this case the Competition Council by its decision is able to impose an obligation on the market participant to take certain actions within a specified period of time or prohibit certain activity. The decision for interim injunction can be challenged at the administrative district court within one month. This decision of the Competition Council for the interim injunction is in force until the final decision of the Competition Council has become unappealable. The criterion for adoption of a decision for an interim injunction will be the fact that failure to cure the breach of competition law can

result in material and irretrievable damage to competition, which in each case is a matter of fact to be evaluated.

The Administrative Procedure Law provides for the possibility of an interim injunction in cases where there is a basis to consider that the enforcement of a judgment could become burdensome or even impossible. Therefore, the standard of judgment for application of interim injunction will be similar to the one that currently exists in civil cases. The court is able to replace by its decision the required administrative act or actual action taken by the authority until the court itself passes judgment. The means of the interim injunction in the administrative procedure are:

- a court decision which substitutes the required administrative act or actual action of the institution until the court judgment; and
- a court decision which imposes an obligation on the relevant institution to perform a certain activity within a specific term or prohibits any specific activity.

28 To what extent may national authorities become involved in civil court proceedings?

In accordance with the Civil Procedure Law, the Competition Council can become involved in a civil dispute in three different ways: (i) as a third party; (ii) as a competent state authority for the purpose of issuing an opinion; and (iii) as an expert. However, it cannot be excluded that the Competition Council could also be involved in other ways, for example, if one of its officials acts as a witness. It must be acknowledged that in Latvia there is a limited amount of court practice in these cases, and the opinion of courts regarding the status of the national authority in such cases and the necessity to invite the competent authority differs.

A third party is the person whose rights or obligations in respect of one of the parties could be affected by the judgment in the relevant matter, and a third party is invited to participate in the case based on the decision of the court, in accordance with the substantiated request of the party to the case or a third party. A third party has the same procedural rights and obligations of that participant on whose part he or she stands. The court may call the national authority for the purpose of issuing an opinion in the case if required by law or upon its own initiative. However, such cases are not common. Finally, the national authority can be invited to participate in the case as an expert. Expert examination is determined by the court upon request of a party if specialist knowledge is required for determination of any material facts in the case (for example, determination of markets). The expert prepares an opinion on the questions asked of him or her, or he or she can be questioned during the court hearing.

It must be noted that the Competition Law states that the court shall inform the Competition Council if the court adjudicates civil claims in relation to violations of the Competition Law. Therefore, it is possible that when the relevant case is reviewed the national authority itself may decide to participate in the hearing of the civil case and could request the court to admit the Competition Council, for example, as a third party.

29 Has the European Commission acted as *amicus curiae* in civil court proceedings? Do national judges make use of their option to request information or an opinion from the Commission?

Considering that Latvia has become a Member State of the European Union only as of 1 May 2004, the Latvian courts have not used the opportunity yet to request the opinion of the European Commission or other European institutions.

30 How have national courts dealt with arguments based on Article 81(3)?

We do not have any information at our disposal that the Latvian courts would have substantiated any judgment by Article 81(3). It should be noted that currently in Latvia, court cases regarding the recovery of damages which are based on violation of competition laws are very rare. We have been informed that administrative courts have referred to Articles 81 and 82; however, these judgments are not yet final and therefore it is too early to judge on the specific court practice.

National courts – contract litigation**31** Can a party to an agreement which may infringe Article 81 or 82 ask a court to declare the agreement void?

There is such a possibility. In accordance with the Latvian Civil Law, an impermissible or indecent action, the purpose of which is contrary to religion, laws or moral principles, or which is intended to circumvent the law, may not be the subject of a lawful transaction and such transaction is void. Based on this provision, and upon proving that the agreement or any provision thereof contradicts the Competition Law, a party to the agreement can request the court to declare invalid the relevant agreement or any of its provisions which are contrary to the law. At the same time it must be noted that proving this will not be easy, especially since the more lenient interpretation should be given preference.

32 How are national courts likely to react to 'artificial' litigation by which parties attempt to obtain a declaration of compliance with Article 81(3)?

The practice which would allow the courts to avoid artificially created court proceedings has not yet developed in Latvia and therefore such court cases are possible. However, there shall be a dispute under the claim, because the courts adjudicate only action claims where a person has a right to protection of their infringed or disputed civil rights against another person (or matters in special adjudication procedure, where the competition is not a subject). Accordingly, the courts shall refuse to accept a statement of claim if the dispute is not within the jurisdiction of the court. If the claim brought by the party artificially is accepted and the case initiated, then the outcome of such a case depends on the evidence in each specific case, and these are the cases where the Competition Council should become involved for the purpose of issuing its opinion. Thus the court would obtain additional evidence which would competently show whether the provisions of the agreement comply with Article 81(3).

Future developments**33** Are changes to legislation or other measures expected which will have an impact on this area in the near future?

There are no significant competition legislation reform proposals in Latvia.

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