



Competition Council
Republic of Latvia

Most important novelties in the competition law enforcement from the last year





Construction cartel case and wiretapes



Based on the information provided by The Corruption Prevention and Combating Bureau (the KNAB) the Competition Council found a violation of the Competition Law prohibition specified in Article 11, Paragraph one and Article 101 (1) the Treaty on the Functioning of the European Union. From the transcripts of the builders' audio recordings submitted by the KNAB, it can be concluded that the representatives of the largest construction companies discussed the conditions of participation in the procurements at least 12 times in total in a period from 2015 to 2018. They were meeting at least three times a year to distribute procurements. In total, almost 90 procurements were discussed during these negotiations, of which the CC identified at least 70.



Wiretapes



Some of legal questions regarding use of wiretapes:

1. does national legal provisions contain right to obtain and use wiretapes in administrative process?
2. wiretapes and personal data (GDPR) question;
3. the transmission of data was derivative of an interference and was there safeguards against arbitrariness (independent court/judge assesment of granting right to make wiretapes);
4. whether the NCA needs to get the wiretape records themselves or is enough with audio transcripts?



Novelties in Public Procurement Law

On 01.01.2023. came into force amendments to the Public procurement law. Some of the most discussed issues related to these amendments:

1. The increased period of exclusion from participating in tenders for participating in horizontal cartel from one year to three years (except for the case where has given immunity from a fine to the candidate or tenderer or has reduced the fine for cooperation under the leniency programme). Three year period is counted from the moment when court judgement or a CC decision has become incontestable and unappealable;
2. The contracting authorities obligation to exclude a tenderer from tenders for three years from the coming into force of the CC decision, which has found guilty this tenderer of participating in horizontal cartel agreement. Even if the tenderer appeals CC decision in court, he still will be excluded from tenders.
3. Consequently, the maximum period for a tenderer may be excluded from public procurement is 6 years (3 +3).



Novelties in Public Procurement Law

Positive results of these amendments:

reduced willingness of market participants to appeal CC decisions in court simply because of litigation per se;

the willingness of market participants to cooperate with CC and settlement has increased in the course of the investigation (in particular after receiving of the SO letter);

CC has a relatively broad discretion in assessing freely the measures taken by each of the market participants previously penalised in order to restore its reliability, which is effective instrument to receive cooperation from market participants. CC opinion (positive or negative) is not administrative act and cannot be appealed in court.



Future amendments in Competition Law of Latvia

1. To provide CC for the right to record explanations from market participant representatives in all cases (in practice we are recording them now too, but there can be theoretical legal problems, if person would revoke its given permission to record its voice);
2. Establish the right CC to punish market participant officials for infringements of competition law. Currently, it is conceptually intended to punish officials with a ban on any type of position in any market participant (to be a member of the board or council of a capital company, to be a procurator, liquidator, become a member, shareholder in company etc.) up to three year period.



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