

## LATVIA

## Cartel regulation in Latvia 2011

Latvian competition laws contain principles prohibiting undertakings to engage in agreements that restrict or distort competition very similar to article 101 of the EU Treaty. Thus, article 11 of the Latvian Competition Law also prohibits undertakings to agree on price fixing, market sharing, collusive tendering and other types of cartel activity. In case a competition infringement of the Latvian or EU competition laws has been detected, the Competition Council (Latvia's national competition authority (LCA)) is entitled to impose commitments and fines that do not exceed 10% of turnover.

As competition principles provided by law are very similar, the insight into the cartel regulation in Latvia will be illustrated by recent practice of LCA and judgments of the Latvian Supreme Court Senate (the Supreme Court) on several appealed LCA's decisions.

At the beginning of 2011, LCA finalised an investigation concerning the banking sector. Almost all banks providing banking services in Latvia had entered into a contract fixing multilateral interchange fee for cash withdrawals from ATMs, cash withdrawals in banks, card transactions at POS terminals and on the Internet with some VISA and MasterCard issued cards. LCA stated that, although application of a national multilateral interchange fee for card transactions at POS terminals does not of itself violate competition law, the agreement that has existed without altering and modifying the fee (sometimes higher than those set by the international payment card organisations) for eight years has substantially restricted competition among banks. The majority of banks appealed the decision, and now it will be examined in court.

In 2011, the Supreme Court completed judicial review in a number of competition

cases where LCA's decision had been appealed. In one case, two road construction and renovation undertakings had agreed to claim the cost increase within their procurement contracts that had been concluded two years earlier with a municipality undertaking. During informal communication, the undertakings found that their actual costs had increased since contracts were signed. Additionally, to verify their considerations, it was agreed that one would send its latest cost calculation via e-mail. The important aspect of the case was that the undertakings did not carry out the initial intention because the contracts provided application of inflation index for contract price recalculation due to inflation increase. The court agreed with LCA view that such practice by undertakings is contrary to the obligation to independently determine the conduct in the market.

Another judgement concerned an earlier investigation by LCA into regular exchange of information among the biggest paper wholesalers in Latvia regarding their sales volumes for previous quarters. Initially, the exchange was carried out directly, namely, each undertaking sent their individual data to other undertakings involved in the information exchange. Later undertakings exchanged the data through a market research company. The Supreme Court considered that it was sufficient to establish an infringement, because the paper wholesale market was deemed oligopolistic and the information was compiled for the sales of paper products in 11 product groups and broken down depending on the type of delivery to customers (direct from manufacturer, from warehouse, etc). The Supreme Court held that such information was sufficiently detailed to enable undertakings to draw conclusions about rivals' business strategy (although the judgment itself was more opaque on this point). In the period when the information exchange was provided through the market research company, in certain paper categories the undertakings could easily establish realised volumes of paper categories where only one or two wholesalers had been active. The case is also notable for the

fact that the Supreme Court supported LCA's formalistic approach using limited economic assessment for establishing oligopolistic features of the market.

Finally, the Samsung cartel case should be mentioned as the last one. Samsung Electronics Baltics (Samsung) and its wholesalers in Latvia, which have also been acting as the biggest merchants in retail market, had engaged in market sharing and resale price maintenance particularly affecting online shops in the market for distribution and reselling of electronic household appliances, especially Samsung LCD TV sets. This was the most visible case as the fine imposed on Samsung was the highest in LCA practice so far. Notably, during the judicial proceedings Samsung and one wholesaler settled the case with LCA, by admitting the violations and therefore receiving reduction of the initial fine (the fine on Samsung was decreased by about 60%).

These cases highlight the fact that currently LCA and the Supreme Court have a quite strict position on communication and information exchange among competitors in Latvia. Another feature of the Latvian jurisdiction is that so far LCA has not taken any decision on basis of a leniency application. Therefore, LCA actively uses dawn raids as means of acquiring evidence and focuses strongly on investigating seized electronic evidence.

SORAINEN is the leading regional business law firm with fully integrated offices in Estonia, Latvia, Lithuania and Belarus. Established in 1995, today SORAINEN numbers more than 120 lawyers and tax consultants advising international and local organisations on all business law and tax issues involving the Baltic States and Belarus.

**SORAINEN**  
ESTONIA LATVIA LITHUANIA BELARUS

SORAINEN  
Rūdolfs Enģelis, Ringla Viksne  
Partner (Mr Enģelis)  
Associate (Ms Viksne)  
Tel: +371 67 365 000  
rudolfs.engelis@sorainen.com  
www.sorainen.com

