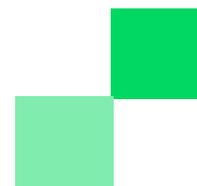


Latvia

Dace Silava-Tomsone and Anatolijs Subocs, Lejins Torgans & Vonsovcis



www.practicallaw.com/A44141

MERGER CONTROL

1. Are mergers and acquisitions subject to merger control in your jurisdiction? If so, please describe briefly the regulatory framework and authorities.

Mergers and acquisitions that meet certain criteria are subject to merger control.

The rules on merger control are primarily set out in the Competition Law (*Latvijas Vestnesis*, No. 151 of 23 October 2001), which came into force on 1 January 2002. The Competition Law has been amended on several occasions. The most recent amendments reflect the accession of Latvia to the European Union and the reform of the EC competition system, and took effect on 1 May 2004.

The secondary legislation in the area of competition law is comprised of Regulations issued by the Latvian Cabinet of Ministers. The recent amendments to the Competition Law require revision of several current Regulations (*see Question 34*).

The Competition Council is the authority that investigates mergers and acquisitions in Latvia and issues regulatory approval (*see box, The regulatory authority*).

2. What are the relevant thresholds/triggering events?

Merger control rules apply if all of the following criteria are met:

- There is a merger within the meaning of the Competition Law (*see below*).
- There is a link to Latvia (that is, at least one of the parties (including foreign parties) performs or is going to undertake economic activity in Latvia, or its activity affects or may affect competition in Latvia). Given the breadth of this concept, foreign-to-foreign transactions can still be governed by Latvian merger control rules.
- The relevant thresholds are met (*see below*).

A merger within the meaning of the Competition Law is any of the following:

- The merging of two or more independent market participants in order to become one market participant (consolidation).
- The joining of one market participant to another market participant (acquisition).
- A situation where one or more natural persons (who has decisive influence over one or more market participants), or one or more market participants, either:
 - acquires a part or all of the assets of another market participant, or rights to use those assets; or
 - acquires decisive influence over another market participant or other market participants.

Decisive influence is defined as either:

- the ability to directly or indirectly control decision-making in the management institutions of the market participant through a shareholding or otherwise; or
- the ability to directly or indirectly appoint sufficient members of a supervisory or management institution to gain the majority of votes in that institution.

Mergers that qualify under the Competition Law and have a link to Latvia must be notified to the Competition Council if any of the following thresholds are satisfied:

- The combined turnover of the parties to the merger during the previous financial year was at least LVL25 million (about US\$46.2 million). The worldwide turnover of Latvian-registered companies and turnover generated in Latvia by foreign companies must be counted when calculating the turnover of the market participant.
- The joint market share of the merger parties exceeds 40% in the relevant market.

Notification to the Competition Council does not have to be submitted in the following circumstances:

- Where credit institutions or insurance companies (whose activities involve transactions with securities, acquired with their own and others' funds) have time limits on the ownership rights to securities of the market participants that have been acquired for further sale, and they:

- do not exercise the voting rights created by the securities to influence competitive activities of the relevant market participants; or
- exercise the voting rights created by the securities, but only to prepare investment of the market participant, its share, assets or the relevant securities, and this investment takes place within a year after the voting rights were acquired. The time limits can be extended by the Competition Council, on application by the relevant credit institution or insurance company, if it can prove that the investment was not possible during that year.
- In the event of insolvency and liquidation of the market participant, where the liquidator or administrator acquires the decisive influence.

For an overview of the notification process, see *Latvia: merger notifications flowchart*.

3. Please give a broad overview of notification requirements. In particular:

- Is notification mandatory or voluntary?
- When should a transaction be notified?
- Is it possible to obtain formal or informal guidance prior to notification?
- Who should notify?
- To which authority should notification be made?
- What is the form of notification?
- Is there a filing fee? If so, how much?
- Is there an obligation to suspend the transaction pending the outcome of an investigation?

- **Mandatory or voluntary.** Notification is mandatory where the thresholds and other criteria are met (*see Question 2*). If notification is mandatory but is not made, the transaction is illegal.
- **Timing.** Notification must be filed before the merger occurs. The conclusion of a binding agreement is not required and notification can be filed, for example, on the basis of a letter of intent or memorandum of understanding.
- **Informal guidance.** The Competition Council encourages informal consultation before notification. However, any opinion expressed during informal consultations is a statement of opinion only, and not a formal decision.
- **Responsibility for notification.** Responsibility for notification lies with the undertakings that are merging. Where a change of control occurs, notification must be filed by the undertaking that acquires the decisive influence.

- **Relevant authority.** Notification is made to the Competition Council.
- **Form of notification.** Notification is submitted on a standard notice form (*Cabinet of Ministers Regulations No. 22 of 22 January 2003*). The notification must be filed in Latvian. In practice, the Competition Council can, on request, permit certain annexes to the notification (for example annual reports) to be filed in English, German or Russian.
- **Filing fee.** There is no filing fee for notification.
- **Obligation to suspend.** There is no express obligation to suspend the transaction pending examination of the notification by the Competition Council. However, if a merger has taken place and it is contrary to the decision of the Competition Council, the parties can be fined.

4. Please outline the procedure and timetable.

The recent amendments to the Competition Law introduced significant changes to the procedure and timetables for merger review. The most significant change is the extension of examination terms for mergers which require additional investigation.

After receipt of the complete merger notification from the parties, the Competition Council has one month to review the notification and adopt a decision. It can either authorise or prohibit the merger, or order an additional investigation.

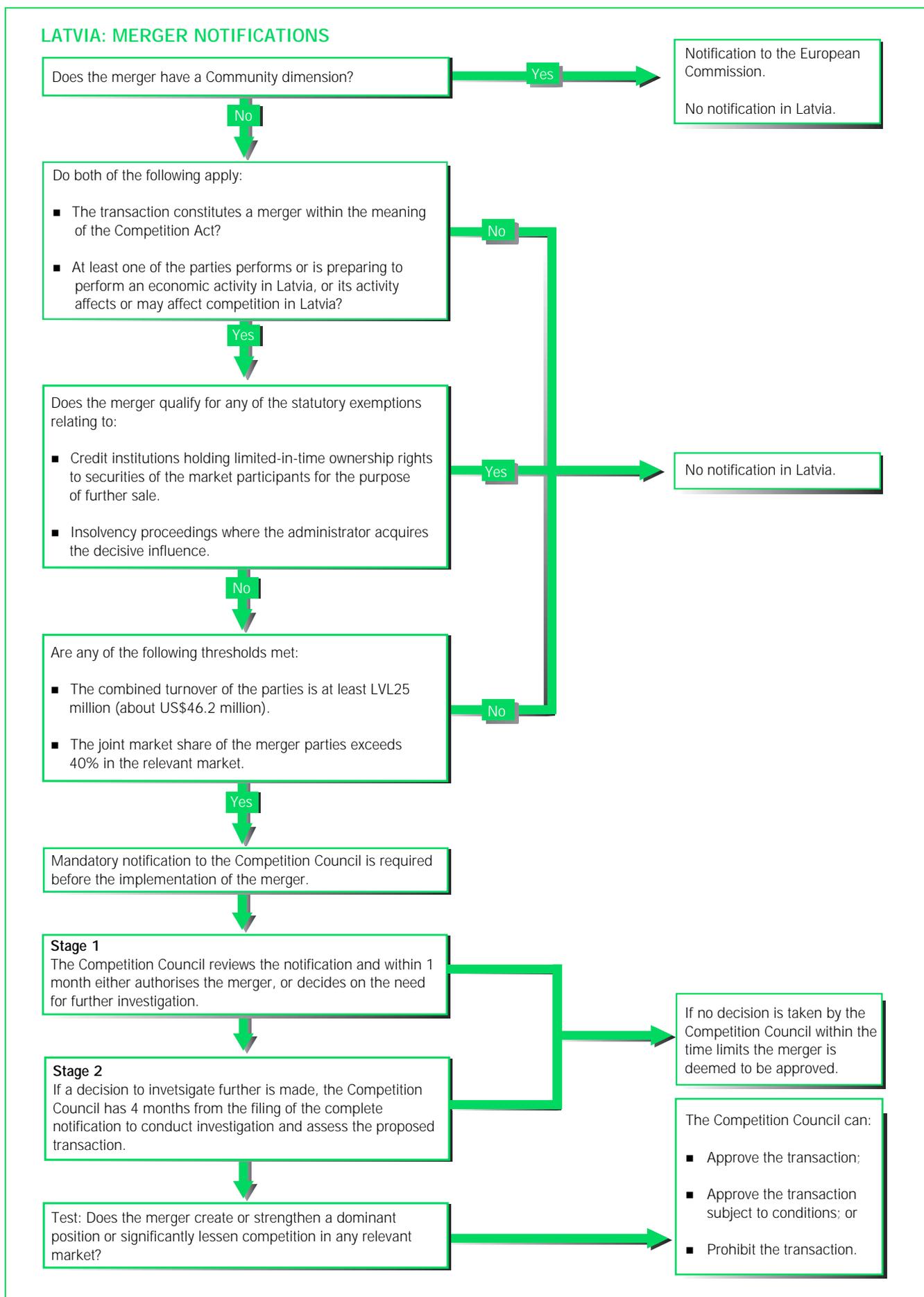
An additional investigation can last up to four months from the day the complete notification was submitted. At the end of this period, a decision must be taken to authorise or prohibit the merger. If the Competition Council fails to adopt a decision within this time limit, the merger is deemed to be authorised.

The decision of the Competition Council to authorise a merger can be subject to conditions and obligations imposed on the market participant.

5. How much publicity is given about merger enquiries? Can the parties request that certain information is kept confidential?

If the Competition Council adopts a decision to review the notification under the merger control rules, it issues a press release regarding the matter. The press release is based on a draft press release, which must be submitted by the notifying party(ies) as an annexe to the notification

On conclusion of the merger investigation, the final decision of the Competition Council is published on its website. The publicly available decision does not contain any information that is deemed to be confidential (such as commercial secrets) and has been indicated as such by the parties. For this purpose, the notifying party(ies) are encouraged to designate clearly which information is to be treated as confidential.



6. Can third parties make representations and, if so, how?

Together with the decision to institute merger proceedings, the Competition Council also invites comments and opinions from interested third parties.

In addition, the Administrative Procedure Law provides that a private person whose rights or legal interests may be infringed by an administrative action can become a third party in administrative proceedings. A third party can be granted the status of a participant by the relevant authority (in this case, the Competition Council) or the court, if a submission is made by the third party itself or through an initiative of a participant in the administrative proceedings.

7. What is the substantive test?

A merger can be prohibited if it results in either:

- The creation or strengthening of a dominant position.
- The significant reduction of competition in any relevant market.

As this test was only introduced on 1 May 2004, there are insufficient precedents to give an indication of how the test will be interpreted in practice.

8. What remedies are available to the regulator and what power of enforcement does it have?

The Competition Council can impose fines (*see Question 10*) on market participants (the undertakings) if:

- Notification has not been submitted.
- A merger has taken place that is contrary to a decision of the Competition Council.

If the merger control provisions are violated, the Competition Council is only entitled to impose penalties for each day of delay during which the violation continues. The law does not provide for powers to order undertakings to de-merge or impose any other measures, because mergers which have taken place in violation of merger control provisions are illegal *per se*.

9. Is there a right of appeal against a decision?

Parties can appeal against a decision of the Competition Council to the Administrative District Court within one month of that decision entering into force. Decisions relating to the institution of proceedings or the extension of the time limit to allow for additional investigation (*see Question 4*) cannot be appealed.

10. What are the penalties for:

- Failure to notify or a delay in notifying?
- Failure to observe a decision of the regulator?

- **Failure to notify.** If a notification has not been submitted, a fine can be imposed of up to LVL1,000 (about US\$1,849) per day, including the day when the notification should have been submitted.
- **Failure to observe.** If a merger has taken place against the decision adopted by the Competition Council, a fine can be imposed of up to LVL1,000 (about US\$1,849) per day, including the day when the unlawful activity commenced.

In deciding on the severity of the fine, in both of the above situations the Competition Council takes into account:

- The severity of the violation, including:
 - the type of violation;
 - the market position of the undertaking;
 - the actual or potential consequences of the violation;
 - the role of the undertaking involved in the violation; and
 - the economic and legal environment at the time of violation (if this may have served as an objective circumstance promoting the violation).
- The duration of the violation.

The fines for severity and duration are calculated as follows:

- Severity of the violation:
 - for negligible violations: up to 0.5% of the net turnover;
 - for relatively serious violations: between 0.5% and 1.5% of the net turnover;
 - for grave violations: between 1.5% and 7% of the net turnover.
- Duration of the violation:
 - if the violation lasted for no more than a year or was committed as a single act: no fine is imposed;
 - if the violation lasted between one and five years: up to 0.5% of the net turnover;
 - if the violation lasted for more than five years: between 0.5% and 1% of the net turnover.

The total fine is the sum of the individual amounts fined for the severity and the duration of the violation. However, the total fine

must be a minimum of LVL250 (about US\$462). The total fine can also be increased or decreased if aggravating or mitigating circumstances are present.

There is currently no distinction made between Latvian and worldwide turnover for calculation of these fines, except where the violation is committed by a Latvian-registered subsidiary or branch of a foreign entity (in which case the fine is calculated on the net turnover of that subsidiary or branch only) (*Cabinet of Ministers Regulations No. 468 of 19 August 2003*).

In addition, the Competition Council can decrease the total fine by up to 75% if the violation was of a particular type and the market participant:

- Notified the Competition Council on its own initiative before the initiation of an investigation and before the Competition Council possessed information which would have allowed an investigation to commence.
- Provided all information and evidence at its disposal to the Competition Council.
- Provided sufficient information to initiate an investigation.
- Actively co-operated with the Competition Council for the duration of the investigation.
- Terminated its involvement in unlawful activities before notifying the Competition Council.
- Was not the initiator of, did not play a leading role in and did not force other market participants to get involved with, the unlawful activity

If a party fails to pay the fine, the Competition Council can submit its decision to the bailiffs for compulsory enforcement against the relevant party(ies).

11. If a merger is cleared, are any restrictive provisions in the agreements (such as non-compete covenants) automatically cleared?

There is no separate regulation on ancillary restraints in Latvia. Restrictive provisions are usually assessed together with the merger itself. Therefore, unless the Competition Council explicitly distinguishes relevant provisions, ancillary restraints are automatically cleared without a separate notification being required.

12. Are any industries specifically regulated?

Except for the specific exceptions applying to the financial sector (*see Question 2*), no other industries are specifically regulated by the merger control rules.

RESTRICTIVE AGREEMENTS AND PRACTICES

13. Are restrictive agreements and practices regulated? If so, please give a broad overview of the substantive provisions and regulatory authority.

The Competition Law prohibits and declares null and void agreements between market participants that have the purpose or effect of hindering, restricting or distorting competition in Latvia, including agreements regarding:

- Any form of direct or indirect fixing of prices or tariffs, or guidelines for their formation, the exchange of information relating to prices or provisions relating to sale.
- Restriction or control on the volume of production or on sales, markets, technical development or investment.
- Division of markets by territory, customers, suppliers or other conditions.
- Provisions which make the conclusion, amendment or termination of a transaction with a third person subject to acceptance of obligations which, according to commercial practice, are not relevant to the particular transaction.
- Participation or non-participation in tenders or auctions, or regarding provisions for participation (or non-participation), except for cases where competitors have publicly announced their joint tender and the purpose of that tender is not to hinder, restrict or distort competition.
- Applying unequal provisions in equivalent transactions with third parties, creating a competitive disadvantage for those third parties.
- Action (or a failure to act) which results in another market participant being forced to leave a relevant market or making the entry of a potential market participant into the market more difficult.

The above list is not exhaustive and highlights only the most serious infringements of the competition rules. Each agreement must be assessed on its own merits and against the background of its possible effect on competition.

The Competition Council monitors the compliance of market participants with the competition rules regarding restrictive agreements and practices.

14. Do the regulations only apply to formal agreements or can they apply to informal practices?

The term "agreement" is broadly defined by the Competition Law. It comprises both formal agreements and concerted practices, as well as decisions taken by registered or non-registered associations of undertakings or their representatives.

15. Please summarise any exclusions or exemptions.

The Competition Council can permit, or permit conditionally for a certain period of time, a restrictive agreement or practice if it meets all of the following criteria:

- It promotes improvements in the production or sale of goods, or encourages economic progress (therefore benefiting consumers).
- It does not impose restrictions on the market participants that are not necessary for the achievement of these objectives.
- It does not allow the possibility of eliminating competition in a substantial part of the relevant market.

The agreement will be exempted only if the parties have duly notified it to the Competition Council and received authorisation.

The Cabinet of Ministers is also authorised to issue block exemptions (that is, regulations defining agreements which are automatically exempted from the anti-trust prohibition if they satisfy certain requirements). There are currently two block exemptions, applying to:

- Agreements in the field of domestic carriage by rail and road.
- Agreements between carriers by sea.

The Cabinet of Ministers has also issued regulations regarding the exemption of certain vertical agreements from the prohibition contained in the Competition Act. These regulations apply to, among other things, vertical agreements concerning non-compete obligations, exclusive sale, exclusive distribution, selective distribution and franchising, if they meet all the criteria set out in the regulations.

16. Is there any formal guidance on product and geographic market definition?

The Competition Law contains definitions of the relevant product and geographic markets.

The relevant product market is defined as a specific product market, which also includes all those products which may substitute this specific product in a particular geographic market, taking into consideration the substitution of demand and supply and specific characteristics of the product and its use.

The relevant geographic market is a geographical territory in which competition conditions in a relevant product market are sufficiently uniform for all market participants and so this territory can be distinguished from other territories.

No other formal guidance is currently in force in respect of market definition. EC case law and the guidelines of the European Commission are used by the Competition Council and market participants for guidance.

17. Is there a formal notification requirement? In particular:

- Is it possible/advisable to notify?
- Is it possible to obtain informal guidance?
- Who should notify?
- To which authority should notification be made?
- What is the form of notification?
- Is there a filing fee? If so, how much?

■ **Notification.** It is possible to notify a restrictive agreement to the Competition Council and, where the agreement is caught by the prohibition of the Competition Law, notification is essential for the agreement to be valid (*see Question 3*). Therefore, it is advisable for undertakings to assess the compliance of their agreements and practices with the Competition Law and, if there is a potential conflict, to file a notification with the Competition Council. So far, few agreements have been submitted to the Competition Council for clearance.

■ **Informal guidance.** The Competition Council encourages informal consultation before notification. However, any opinion expressed on the basis of information provided during informal consultations is a statement of opinion only, and not a formal decision.

■ **Responsibility for notification.** The parties to the agreement are responsible for filing the notification. If notification is submitted by only some of the parties to the agreement, they must inform all other parties, in writing, of the notification. If the agreement takes the form of a decision by an association of market participants, the notification must be submitted by that association.

■ **Relevant authority.** The notification must be made to the Competition Council.

■ **Form of notification.** Notification must be submitted on the standard form (*Article 11, Part 1, Competition Law, annexed to Cabinet of Ministers Regulations No. 699 of 16 December 2003*). Annexes to the notification must be submitted in Latvian. In practice, the Competition Council can, on request, permit certain Annexes to the notification (for example annual reports) to be filed in English, German or Russian.

■ **Filing fee.** There is no filing fee for notification.

18. Please outline the procedure and timetable.

After receiving notification, the Competition Council publishes the notice regarding the agreement in the *State Gazette Latvijas Vestnesis* and invites interested parties to submit their opinions

in writing. Opinions must be submitted within 15 days of publication of the notice.

The Competition Council reviews and assesses the submitted information and, if necessary, can request additional information. The notification must be reviewed within one month from the date of submission. This term can be extended to four months if the fact-finding process requires a longer time.

After reviewing the notification, the Competition Council must adopt a decision to permit, permit conditionally or prohibit the agreement. The permission is granted for a certain period of time. If the permission is unconditional, it enters into force on the date the agreement is concluded. If there are conditions attached, the permission enters into force once the parties have fulfilled the relevant conditions.

19. Are details of any potentially restrictive agreement or practice made public during the investigation? If so, can the parties request that any information is kept confidential?

The Competition Council does not make details of any potential restrictive agreement or practice public during the investigation process. Only general information on the investigation is available.

This does not compromise the parties' right of access to the file and information regarding the investigation procedure at any stage of the process. The right of access to the file does not apply to information which must not be disclosed in accordance with the law.

20. Can third parties initiate an investigation by making a complaint or representations during the course of an investigation? If so, how?

A complaint by a third person to the Competition Council is one of the legitimate grounds for initiation of competition proceedings.

To have standing to complain about an infringement of competition rules, a person must have sufficient interest in preventing the infringement. A person with sufficient interest is defined as a person who may suffer violation of his rights or legitimate interests because of the infringement.

Third persons with standing are entitled to submit a complaint, in written form, to the Competition Council. There is no standard form for the notification of the complaint. The only requirement is that the complaint must contain information regarding the:

- Persons involved in the possible infringement of competition rules.
- Evidence which supports the possible infringement and on which the complaint is based.

- Provisions of the competition law which are possibly being infringed.
- Facts which support the person's sufficient interest in preventing infringement of competition rules.
- Actions that were taken to end the infringement before the Competition Council received the complaint.

In order to assess the complaint, the Competition Council can use its investigatory powers to collect and request information and evidence. The Competition Council must adopt a decision whether to start competition proceedings within 30 days of receiving the complaint. The reasons for rejecting the complaint could be, for example, submission of incomplete information or insignificance of the infringement.

21. What are the regulator's enforcement powers and what are the other consequences of implementing a prohibited restrictive agreement or engaging in a prohibited practice? In particular:

- What orders can be made and fines imposed?
- Can an entire agreement be declared void (that is, not only any restrictive provisions)?
- Can personal liability (civil or criminal) attach to individual directors or managers?
- Can third parties bring claims for damages?

- **Orders and fines.** If the Competition Council finds that the agreement or practice infringes competition rules, it can impose both a "legal obligation" and a fine. Neither the Competition Law nor any regulations define the term "legal obligation". However, in practice the Competition Council has exercised its powers to impose behavioural measures (such as an obligation to cease the infringement). The Competition Council can impose fines on each market participant of up to 5% of its net turnover for the previous financial year, with a minimum of LVL250 each (about US\$462). However, if the restrictive agreement or practice was between competitors, the Competition Council can impose a fine on each competitor of up to 10% of its net turnover for the previous financial year, with a minimum of LVL500 each (about US\$925).

There is currently no distinction made between Latvian and worldwide turnover for calculation of this fine, except where the violation is committed by a Latvian-registered subsidiary or branch of a foreign entity (in which case the fine is calculated on the net turnover of that subsidiary or branch only) (*Cabinet of Ministers Regulations No. 468 of 19 August 2003*).

- **Impact on agreements.** Any agreements between market participants, which have the purpose or effect of hindering, restricting or distorting competition, are declared null and void from the date of their conclusion. The Competition

Council can decide whether only the restrictive provision or the entire agreement is invalidated.

- **Personal liability.** The competition rules do not provide for personal liability.
- **Third party claims.** The Competition Law imposes an obligation on any market participant who deliberately or negligently violates the competition rules on restrictive agreements to compensate for damage caused by this infringement to another market participant or party to the agreement. An award of compensation is within the jurisdiction of the civil courts and not the Competition Council. Therefore, an action for damages must be brought before the relevant civil court.

22. Is there a right of appeal against a decision of the regulator?

A decision of the Competition Council can be appealed to the Administrative District Court within one month of that decision entering into force (see *Question 9*).

23. Please summarise any powers that the relevant regulator has to investigate potentially restrictive agreements or practices.

After initiating proceedings, the Competition Council collects the information necessary for making a decision on the matter. As a general rule, the information requested by the Competition Council must be provided within seven days of the request.

The investigatory powers of the Competition Council are quite broad and include:

- **Requests for information.** The Competition Council has the right to request necessary information, including confidential information, from any natural or legal persons, or state and municipal institutions, as well as the right to receive oral or written explanations from relevant persons.
- **Inspection visits.** The Competition Council can conduct inspection visits, including visits made without advance notice, of the market participants. During the inspections, the officials of the Competition Council can request oral or written explanations, review any documents and take possession of these documents or copies of them.
- **Seizure.** The Competition Council can seize relevant documents and property.
- **Entrance.** The Competition Council can gain entrance into vehicles, private residences and other movable or immovable property of the market participants and inspection of property and documents contained within. The searches must be authorised by a court and conducted in the presence of the police. If it is suspected that the relevant documents may be located in a third party's movable or immovable property, the Competition Council also has the right to inspect that property, subject to authorisation by a court.

- **Issuing a decision.** The Competition Council can issue a decision that an administrative violation has occurred, where a person fails to supply the requested information or cooperate with the Competition Council.

24. How is Article 81 enforced by your jurisdiction's national competition authority and courts in accordance with EC Regulation 1/2003 (EU member states only)? Are there any differences between the enforcement of Article 81 and the enforcement of your jurisdiction's national competition laws?

The amendments to the Competition Law (see *Question 1*) were specifically designed to reflect the changes introduced in EC competition law by EC Regulation 1/2003 (the Regulation). Accordingly, they take full account of the decentralisation and simultaneous application of national and EC competition law introduced by the Regulation.

The Competition Law explicitly authorises the Competition Council to undertake the obligations assigned to, and exercise rights conferred on, the national competition authority by the Regulation. These rights include, among others, the application of Article 81 by the Competition Council to agreements, decisions or concerted practices which may affect trade between member states.

The investigation of cases under Article 81 by the Competition Council is conducted in a similar way to national proceedings. The two main differences in the treatment of infringements of EC competition rules are the leniency policy and the possibility that interim relief can be awarded by the Competition Council.

Leniency policy

Article 29(1) of the Competition Law provides that a market participant can receive a reduction or full exemption from the fine when he, on his own initiative, notifies the Competition Council of any of the following types of agreement between competitors (prohibited by Article 81(1) of the Treaty):

- Direct or indirect fixing of prices or tariffs, or guidelines for their formation, as well as exchange of information relating to prices or provisions regarding sales.
- Restrictions or controls on the volume of production or on sales, markets, technical developments or investment.
- Division of markets by territory, customers, suppliers or other conditions.
- Participation or non-participation in tenders or auctions, or regarding provisions for participation (or non-participation).

The scope of the leniency policy and its application in practice are not yet clear. The regulations, under which the decision regarding reduction of or exemption from a fine will be taken, are not yet adopted. The leniency policy is specific to Latvian competition law and does not apply to other national proceedings.

Interim relief

The Competition Council also has the right to award interim relief when it has convincing evidence that there is a possible infringement of EC competition law and that failure to end such infringement may cause significant and irreversible damage to competition. Interim relief takes the form of an obligation or prohibition on the market participant to perform a particular action within a set period of time. The decision on interim relief can be appealed to an administrative court within one month of its entering into force. In national competition proceedings, the interim relief can be issued only by the court and not the Competition Council, on the request of an interested party.

When the European Commission conducts its own investigation, the Competition Council has an obligation to provide assistance, if required. On the request of the European Commission, and following a relevant decision of the court, the Competition Council can conduct searches and inspections of premises (for example homes or means of transport). The same procedure applies when a request is received from a foreign national competition authority in a matter regarding infringement of EC competition law.

With respect to enforcement by national courts, recent amendments to the Law on Civil Procedure empower the courts to apply EC legislative norms when authorised to do so. According to the Regulation, judges must apply Articles 81 and 82 as soon as they apply national competition law to conduct caught by the Articles. In order for the Competition Council and the European Commission to be able to exercise their rights, the Competition Law requires a national court that has opened proceedings regarding infringement of EC competition law to send a copy of the application and final decision to the Competition Council and the European Commission within seven days.

MONOPOLIES AND ABUSE OF MARKET POWER

25. Are monopolies and abuses of market power regulated? If so, please give a broad overview of the substantive provisions and regulatory authority.

Article 13 of the Competition Law, nearly an identical copy of Article 82 of the EC Treaty, prohibits abuse of a dominant position in any manner. The Competition Council is responsible for monitoring compliance with this provision.

26. Are there any broad categories of behaviour that may constitute abusive conduct?

A non-exhaustive list of categories of abusive conduct includes:

- Refusal to enter into transactions with other market participants or amending the provisions of a transaction without an objectively justifiable reason.
- Restrictions on the amount of production or sale of goods, on the market or on technical development, without an objectively justifiable reason, to the detriment of consumers.
- Imposition of provisions on other market participants where either:
 - entering into, amendment or termination of transactions makes those participants dependent on them; or
 - the market participants accept the additional obligations as, by their nature and commercial use, they have no connection with the particular transaction.
- Direct or indirect imposition, or application, of unfair purchase or selling prices, or other unfair trading provisions.
- Application of unequal provisions in equivalent transactions with other market participants, creating disadvantageous conditions for them, in terms of competition.

27. Are there any specific tests for dominance?

Unlike EC law, Latvian competition law defines a dominant position not only with reference to the market power but also with respect to a quantitative criterion of a specific market share of the market participant.

According to the Competition Law, a dominant position is an economic (commercial) position in a relevant market of the market participant(s) where they hold at least 40% of the market share and have the ability to significantly hinder, restrict or distort competition in any relevant market for a sufficient period of time by acting with full or partial independence from competitors, clients or consumers.

28. Are there any exclusions or exemptions?

Not applicable.

29. Can pre-notification guidance be obtained? If so, please outline the procedure?

Not applicable.

30. Please summarise the regulator's powers of investigation.

Powers of investigation of potential abuses of a dominant position are the same as for investigation of restrictive agreements and practices (*see Question 23*).

THE REGULATORY AUTHORITY

Name. The Competition Council

Head. Mr Peteris Vilks

Contact details. 5a Blaumana Street
Riga LV-1011
Latvia
T +371 728 2865
F +371 724 2141
E council@competition.lv
W www.competition.lv

Outline structure. The Competition Council is a state institution deriving its authority from the Competition Law as well as from other legislative acts. It was founded in 1998 and is under the supervision of the Ministry of Economy.

The Competition Council consists of four members and a Chairman appointed by the Cabinet of Ministers. The term in office for the Chairman and the members of the Competition Council is five years. The Competition Council is an independent body; neither the Cabinet of Ministers nor any other institution may give it suggestions regarding the opening of an investigation or the contents of a decision.

The Bureau is an administrative department of the Competition Council. It provides secretarial and expert support in investigating matters, analysing documents and drafting decisions. The Bureau comprises six structural divisions:

- Legal Division.
- The First Analytical Division.
- The Second Analytical Division.

- Information and External Relations Division.
- Division of Methodology and Record Keeping.
- Financial and Administrative Division.

Responsibilities. The Competition Council is authorised to monitor compliance with the competition legislation in Latvia. Its main objective is to ensure protection, preservation and development of free, fair and equal competition in all sectors of the national economy.

The responsibilities of the Competition Council set out in the Competition Law include, among other things:

- Review of merger notifications.
- Monitoring compliance of market participants regarding the prohibitions on:
 - abuse of a dominant position;
 - restrictive agreements and practices; and
 - unfair competition.
- Monitoring compliance with the law on advertising.

Procedure for obtaining documents. Decisions of the Competition Council are published on its website and in the *State Gazette Latvijas Vestnesis*. The Competition Authority also drafts an annual report on its activities and developments in the field of Latvian competition law. Documents relating to investigation of particular cases are not available to third parties.

31. What are the penalties for abuse of market power?

On finding an abuse of a dominant position, the Competition Council adopts a decision regarding establishment of the infringement, imposition of the legal obligation (usually an obligation to cease the abusive conduct) (see *Question 21*) and imposition of a fine.

The abuse of a dominant position is punishable by a fine of up to 5% of the net turnover of a market participant for the previous financial year, at a minimum of LVL250 (about US\$462). If the market participant fails to fulfil the imposed legal obligation, the Competition Council can increase the fine by up to 10% of the net turnover of the market participant for the previous financial year, at a minimum of LVL500 (about US\$925).

There is currently no distinction made between Latvian and worldwide turnover for calculation of this fine, except where the violation is committed by a Latvian-registered subsidiary or branch of a foreign entity (in which case the fine is calculated on the net turnover of that subsidiary or branch only) (*Cabinet of Ministers Regulations No. 468 of 19 August 2003*).

32. How is Article 82 enforced by your jurisdiction's national competition authority and courts in accordance with EC Regulation 1/2003 (EU member states only)? Are there any differences between the enforcement of Article 82 and the enforcement of your jurisdiction's national competition laws?

The enforcement of Article 82 by the Competition Council is equivalent to that of Article 81 (see *Question 24*).

JOINT VENTURES

33. Please explain how joint ventures are analysed under competition law.

Joint ventures which fulfil the criteria for a notifiable merger (see *Question 2*) are analysed under the merger review rules.

Cases where the market participant is subject, after the merger, to joint decisive influence (for example in a joint venture), and

the consequence or purpose of establishing the market participant is or may be the co-ordination of competitive activity of market participants exercising decisive influence, are also assessed under the rules on prohibition of restrictive agreements and practices.

Regulations by the Cabinet of Ministers relating to the procedure for submission of merger notifications and the procedure for calculating fines for violation of rules on restrictive agreements and practices. These Regulations will replace the current Regulations, which will remain in force until 1 November 2004 at the latest. The information provided in this chapter reflects the current law, as the new regulations have not yet been adopted.

PROPOSALS FOR REFORM

34. Please summarise any proposals for reform.

The most recent amendments to the Latvian competition rules came into force on 1 May 2004. They provide for the adoption of two new

www.practicallaw.com/aboutglobal

Country Q&A

PRACTICAL LAW COMPANY

PLC Global Counsel Web

Cross-border know-how and market intelligence

ROSCHIER RAIDLA

FENNO-BALTIC PARTNERING
FINLAND • ESTONIA • LATVIA • LITHUANIA

An integrated cross-border
operation of premier law firms
in four jurisdictions

- OFFERS YOU**
- direct access to the Baltic rim market
 - solutions based on premier legal expertise in each jurisdiction
 - uniform quality and best practices of international standard

- IN THE PRACTICE AREAS**
- mergers and acquisitions
 - venture capital and private equity
 - finance and capital markets
 - EU and competition
 - corporate and commercial
 - dispute resolution
 - intellectual property and technology
 - real estate

The law firms Roschier Holmberg in Finland, Raidla & Partners in Estonia, Lejiņš, Torgāns & Vonsovičs in Latvia and Norcouš & Partners in Lithuania provide services under a common brand RoschierRaidla. Please visit www.roschierraidla.com for more information.

ROSCHIER HOLMBERG

HELSINKI OULU
TAMPERE TURKU VAASA
Keskuskatu 7 A
FI-00100 Helsinki, Finland
Tel. +358 (0)20 506 6000
www.roschier.com

RAIDLA & PARTNERS

TALLINN
Roosikrantsi 2
EE-10119 Tallinn, Estonia
Tel. +372 640 7170
www.raidla.ee



Lejiņš, Torgāns & Vonsovičs
zvērinātu advokātu birojs

RIGA
Valdemara 20
LV-1010 Riga, Latvia
Tel. +371 782 1525
www.lt-v.lv



NORCOUS PARTNERIAI
Advokatų kontora / Law Offices

VILNIUS
A. Goštauto 12 A
LT-01108 Vilnius, Lithuania
Tel. +370 5268 3620
www.norcous.lt