

**Latvian Competition Council's decision in the Projecta case increases
uncertainty in the application of the Latvian merger control rules in cases
involving foreign entities**

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On 16 May 2007, the Latvian Competition Council approved the acquisition of part of the assets of SIA "Leipurien Tukku Latvia" (hereinafter "Leipurien Tukku") by Projecta Oy (hereinafter "Projecta") (decision No. 43a in the case No. 473/07/06/4). Leipurien Tukku, a subsidiary of a Finnish company Kauko-Telko Oy, is a Latvian company engaged in the import and wholesale of baking ingredients, raw materials for glass insulation products, materials and instruments for installation of glass insulation materials and hand tools. Projecta is a Finnish company engaged in distribution and service of wood-processing and surface treatment machinery, distribution of aluminium processing machinery, drilling equipment, saws and similar equipment. Projecta does not carry out any activities in Latvia.

Analysis of the Competition Council

In its decision, the Competition Council first analysed the requirements to file a notification in the case. On the basis of the information provided by the parties the Competition Council determined that the turnover threshold of LVL 25 million set out under the Latvian Competition Act (hereinafter the "Competition Act") was not been met. In this connection the Competition Council stated, *inter alia*, that since Projecta does not have any Latvian turnover, "the concentration does not affect any relevant market in the territory of Latvia". However, according to estimation of Leipurien Tukku, the turnover generated by the assets which were to be sold to Projecta reached market shares in excess of 40% in certain relevant markets, thus, meeting the other notification threshold set out in the Competition Act. After the initial market investigation, the Competition Council opened an in-depth investigation into the case. The decision does not provide any information

on the reasons for opening the in-depth investigation, but it is possible that the question has only been of a deadlock in the authority's work load.

In the course of investigation, the Competition Council determined that Leipurien Tukku was active, first, in the market of hermetic materials used in the production of glass packets, which can further be divided into primary and secondary insulation materials, second, in the market of humidity absorbents used in production of glass insulation and, third, in the market for aluminium profiles used in production of glass packets. In respect of all the above product markets the Competition Council defined the relevant geographic market as the territory of Latvia. Projecta indicated that it does not carry out any commercial activities in Latvia, therefore, is not active on any of the relevant markets identified in the case.

The Competition Council concluded that even though the market share of Leipurien Tukku on the relevant markets is comparatively higher than the market shares of the other market participants (with the exception of the market of secondary hermetic materials), the notified concentration will not cause changes in the market shares or increase the amount of concentration on the market. Consequently, the Competition Council approved the concentration.

Conclusions

According to Article 15, Paragraph 1, Item 3 of the Latvian Competition Law, a concentration is deemed to arise where "one or more market participants acquire part or all of the assets of another market participant or other market participants or direct or indirect control over another market participant or other market participants". Thus, there should be at least two market participants involved in a transaction for it to qualify as a concentration under Competition Act. Article 1, Paragraph 9 of the Competition Act defines a market participant as "any person (including foreign person) which carries out or intends to carry out economic activity in the territory of Latvia, or whose activity affects or may affect competition in the territory of Latvia".

As indicated in the decision, Projecta did not carry out any economic activity in Latvia at the time of filing the notification. The decision does not contain any analysis by the Competition Council on whether there were any circumstances which it could be concluded that Projecta either intended to carry out economic

activities in Latvia or that Projecta's existing foreign activities affected or may have affected competition in the territory of Latvia.

Based on the decision, it may be concluded that the Latvian Competition Council accepts jurisdiction over review of concentrations even if only one of the parties involved has Latvian nexus. The same approach has been followed in another control case, namely the merger between Ahlsell AB and SIA "Profs Latvia" (case No. 1739/07/06/22). Both decisions concern an acquisition of control over Latvian entity or over assets used in Latvian operations where acquiring foreign entity does not have any existing nexus to Latvia.

It remains to be seen whether Projecta decision (as well as Ahlsell decision) demonstrates a change in the approach of the Competition Council towards much broader interpretation of the definition of the term "market participant" under the Latvian law or whether the decision simply fails to reflect certain case-specific circumstances which made the Competition Council to conclude that in this particular case the foreign entity involved shall qualify as a market participant. For the time being, it is recommended that in cases involving one undertaking with a market share in excess of 40% on any relevant market in the territory of Latvia or Latvian turnover in excess of LVL 25 million, the Competition Council is contacted to discuss the possible requirement to notify the concentration even if the other party involved is a foreign entity with no Latvian nexus.