

EU DAMAGES DIRECTIVE 2014/104/EU IMPLEMENTATION IN LATVIA

2016

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ANNOTATION

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- Draft Law which includes amendments in the Competition Law of Latvia **has been announced in 12 May 2016.**
- The Law **includes provisions arising from Directive 2014/104/EU** of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

- Latvia as the member state of the European Union is obligated to implement the requirements of the Directive into the national law.
- Law as an implementation step shall enter into force on **27 December 2016.**

- **Competition Law Section 21. Compensation for Losses**
A person who has incurred losses due to a violation of this Law is entitled to seek compensation for losses from the violator and interest due, set by law. Upon a request by the claimant, a court may at its discretion set the amount of the compensation.
- At the moment rule does not include the requirements of the Directive 2014/104/EU.

THE PURPOSE OF AMENDMENTS:

- To implement the requirements of Directive 2014/104/EU and to **increase the protection for persons who have suffered damages from an infringement of the competition law**, also to include the responsibility of public law legal persons.
- In other words – to implement certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association. Also to foster undistorted competition in the internal market. (*Article 1, Directive 2014/104/EU*)

AMENDMENTS IN SECTIONS:

- Section 1. **Terms** – cartel agreement, infringement of competition law, indirect purchaser, overcharge, infringer, direct purchaser;
- Section 7. **Rights of Competition Council**
- Section 12.¹ **Leniency programme**
- Section 14.¹ **Duty of institutions performing the functions and tasks of the State administration to ensure free and fair competition**
- Section 21. **Compensation for Losses**
- Section 21.¹ **Indirect purchasers**
- Section 21.² **Actions for damages by claimants from different levels in the supply chain**
- Section 21.³ **Consensual dispute resolution and effect of resulting consensual settlements on subsequent actions for damages**
- Section 21.⁴ **Beginning and interruption of the limitation period**

AT THE SAME TIME SHALL ENTER INTO FORCE:

- **Amendments in Civil Procedure Law** – a new Chapter covering «actions for damages from an infringement of the competition law»;
- **Amendments in Cabinet Regulation No. 179** of 29 March 2016, «The Procedures for the determining of Fines for Violations Referred to in Section 11, Paragraph one and Section 13 of the Competition Law and Section 5, 6 and 8 of the Unfair Retail trade Practices Prohibition Law».

PLANNED AMENDMENTS TO THE COMPETITION LAW IN LATVIA

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TERMS

- To amend Section 1 with terms:
 - Cartel agreement;
 - infringement of competition law;
 - indirect purchaser;
 - Overcharge;
 - Infringer;
 - Direct purchaser;
- To amend Section 12.¹ with term:
 - Leniency programme;

TERMS

- **Cartel agreement** — an agreement between competitors, the purpose of which is to prevent, restrict or distort competition between them, including the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including participation or non-participation in tenders or auctions or conditions of this act (omission), restrictions of imports or exports or anti-competitive actions against other competitors;

TERMS

- **Infringement of competition law** - an infringement of this law or Articles 101 or 102 of the Treaty on the Functioning of the European Union or national competition law of the country concerned, i.e. the law that pursues the same objective as Articles 101 and 102 of the Treaty on the Functioning of the European Union and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of Regulation (EC) No 1/2003, excluding provisions of law which impose criminal penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced;
- Covers an infringement of Competition Law, also of the Treaty on the Functioning of the EU, and also of the national competition law of the country concerned;

TERMS

- **Indirect purchaser** - a natural or legal person who acquired, not directly from an infringer, but from a direct purchaser or a subsequent purchaser, products or services that were the object of an infringement of competition law, or products or services containing them or derived therefrom;
- Person who has acquired products or services from direct purchaser, who has acquired products or services from a person who infringes the competition law.

TERMS

- A **leniency programme** concerning the application of Article 101 of the Treaty on the Functioning of the European Union or a corresponding national competition law allows a market participant in return for the disclosure of a secret cartel agreement, independently of the other market participants involved in the cartel, in cooperation with an investigation of the competition protection authority, by voluntarily providing presentations regarding that participant's knowledge of, and role in, the cartel to receive immunity from, or a reduction in, fines.
- An effective step – promotes detection of more serious infringements, effective prosecution and penalties.

DUTY OF INSTITUTIONS PERFORMING THE FUNCTIONS AND TASKS OF THE STATE ADMINISTRATION TO ENSURE FREE AND FAIR COMPETITION

- It is prohibited for state administration to create advantages, **discriminate** market participants or association of market participants, **create different competitive conditions**, or to perform actions, which impede development of effective competition or result or may result in a hindrance, restriction or distortion of competition.
- To ensure the above mentioned the Competition Council will carry out **negotiations**.
- If the negotiations result in failing to ensure above mentioned, the Competition Council may adopt a decision **imposing legal obligations**.
- Decision may be appealed to a regional administrative court.
- This kind of regulation is also invented in Sweden, Italy, Finland, Romania, Slovakia, Lithuania and Czech Republic.

ACTIONS FOR DAMAGES

- To amend **Section 21 Paragraph 1** as follows: The person, who has suffered damages from an infringement of the competition law, may claim and obtain from the infringer **full compensation of the damage**, incl. loss of profit and interest from the day, when the harm occurred, until the day, when compensation is paid, to ensure the position in which that person would have been had the infringement of competition law not been committed.

ACTIONS FOR DAMAGES

- To supplement with Paragraphs 3, 4, 5, 6, 7 and 8.
- Paragraph 3 : The market participants, who have jointly committed an infringement of competition law, shall be **jointly and severally liable** for the losses they caused.
- Paragraph 4: Above mentioned shall not be applicable to the market participant, which is a small or a medium-sized company if:
 - its market share in the relevant market was below 5 % at any time during the infringement of competition law; and
 - the application of joint and several liability under Paragraph 3 would irretrievably jeopardise its economic viability and cause its assets to lose all their value;
- Paragraph 5: The exception is not applicable to the market participant, who **has already committed such an infringement of competition law**, or which organised or led the infringement of competition law or has coerced other market participants to commit an infringement of competition law AND the cases, when the market participant shall be liable for the losses it caused to its own direct or indirect purchasers or suppliers, or also other persons, who cannot obtain full compensation from other market participants, who participated in the infringement of competition law.

ACTIONS FOR DAMAGES

- Paragraph 6: The market participant, who **has been granted immunity from fines** under a leniency programme, shall be **jointly and severally responsible** for the losses it caused:
 - only to its direct or indirect purchasers or providers;
 - to other persons, who are not direct or indirect purchasers or suppliers, or also other persons, only if full compensation of damages cannot be obtained from other market participants, who participated in the infringement of competition law.
- Paragraph 8: The scope of respective damages provided to other infringers of the market participant, who has been granted immunity from fines under a leniency programme, **cannot exceed the scope of damages that it caused to its direct or indirect purchasers or providers.**

INDIRECT PURCHASERS

- The rights defined in Section 21 Paragraph 1 (compensation for Losses) is also applicable to the right of an injured party to obtain compensation for loss of profits due to a full or partial passing-on of the overcharge.
- If the defendant, in response to an action, invokes the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law, the burden of proof shall rest with it.
- The indirect purchaser **shall be deemed to have proven** that a passing-on where it has shown that:
 - 1) the defendant **has committed an infringement** of competition law;
 - 2) the infringement of competition law **has resulted in an overcharge** for the direct purchaser of the defendant; and
 - 3) the indirect purchaser has purchased the goods that were **the object of the infringement** of competition law, or has purchased goods derived from or containing them.
- Above mentioned shall not apply where the defendant can demonstrate credibly to the satisfaction of the court that the overcharge was not, or was not entirely, passed on to the indirect purchaser.

ACTIONS FOR DAMAGES BY CLAIMANTS FROM DIFFERENT LEVELS IN THE SUPPLY CHAIN

- To amend the Law with Section 21.² which covers how to avoid that actions for damages by claimants from different levels in the supply chain **lead to a multiple liability or to an absence of liability of the infringer**, in assessing whether the burden of proof is satisfied, courts seized of an action for damages, by means available, shall take due account of:
 - 1) actions for damages that are related to the same infringement of competition law, but that are brought by claimants from other levels in the supply chain;
 - 2) judgements resulting from actions for damages;
 - 3) relevant information in the public domain resulting from the public enforcement of competition law.

CONSENSUAL DISPUTE RESOLUTION AND EFFECT OF RESULTING CONSENSUAL SETTLEMENTS ON SUBSEQUENT ACTIONS FOR DAMAGES

- While consensual dispute resolution in relation to **the infringement of competition law is ongoing**, the **limitation period** for bringing an action for damages **shall be suspended**. The suspension of the limitation period shall apply only with regard to those parties that are or that were involved or represented in the consensual dispute resolution.

BEGINNING AND INTERRUPTION OF THE LIMITATION PERIOD

- A limitation period **shall not begin to run** before the infringement of competition law has ceased and the claimant knows, or could know:
 - 1) of the behaviour of the infringer and the fact that it constitutes an infringement of competition law;
 - 2) of the fact that the infringement of competition law caused harm to it; and
 - 3) the identity of the infringer.
- A limitation period **is suspended**, for the time, when a competition authority takes action for the purpose of the investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension shall end one year after the infringement decision has entered into effect and has become indisputable or after the proceedings are otherwise terminated