

PwC Competition watch 2019

Latvia



In English
2019



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Introduction



Māris Butāns
Head of the EU and
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I am convinced that competition in business is both desirable and necessary as a mutual interaction. As a result, everyone benefits from it because it leads to the improvement of the quality of goods and services and of business environment in general.

The conclusions made in application of competition law are largely based on data; however, this time we will look at the results of the enforcement in Latvia.

Willingness as well as effective regulatory tools aimed at encouraging entrepreneurs to act fairly are necessary. By February 2021, Latvia must implement the EU directive ECN+,¹ which provides for strengthening of the competition authorities of all Member States. It can be anticipated already now that there will not be enough time to respond to the objections raised by the general public against the existing framework of determining fines.

The information summarised by us comprises both historical and current data highlighting the actual

situation in the area of the supervision of competition. We believe it will help companies consider the risks in their industry sectors seriously and dispel myths about the imposing of fines.

This summary is based on the publicly available data of the Competition Council (“CC”), obtained from the CC’s decisions on cartels and abuse of a dominant position, regardless of whether the competition rules of a Member State or the EU had been applied. All the data summarised and the analysis provided herein are the results of a careful effort of the professionals of the law firm *PwC Legal*, especially the EU and Competition Law practice group.

The analysed data relate to the CC decisions passed between 2002 and the end of 2018.

I hope that the information contained in this report will be useful and raise awareness of the violations of competition law as well as of the consequences that are fairly severe in the case of Latvia.

¹ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market



Key facts and figures

From 2002 to 2018



The construction, transport and logistics sectors have been fined the most



302
legal entities identified to have committed violations



326
violations



286

fines for prohibited agreements

of which **254** were particularly serious



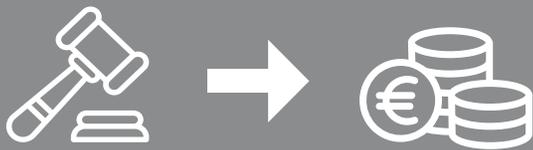
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fines for the abuse of a dominant position



Key facts and figures

From 2002 to 2018



The biggest fine imposed on a single company in 2009 was

5 833 693,74 EUR



The average duration of the examination of a violation



The severity of the fine

1,49%

of turnover, on average

Most companies had been fined between



2011 - 2013

in 43% ↓

cases, the basis for the reduction of the fine was either the proportionality or the effectiveness principle





Types of violations

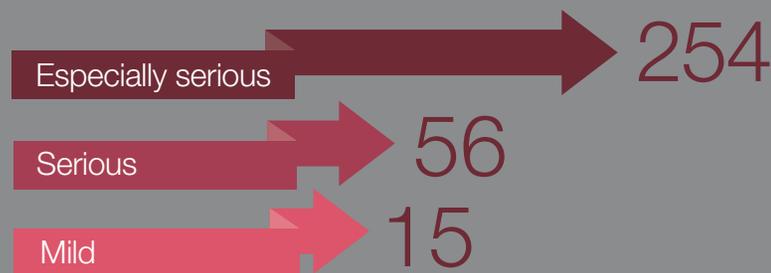
Under the Competition Law, the most common types of violations are **prohibited agreements** (Section 11 of the Competition Law) and an **abuse of a dominant position** (Section 13 of the Competition Law). For such violations classified on a scale from *especially serious* to *mild*, companies in 16 different sectors had been fined between 2002 and 2018.

-  A prohibited vertical agreement and prohibited cooperation agreement are considered a **mild** violation.
-  The abuse of a dominant position and a vertical agreement aimed at limiting the buyer's ability to determine the resale price are considered **serious** violations.
-  A cartel agreement and an agreement containing restrictions on the import or export of goods are considered **especially serious** violation.

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If competition risks are not addressed in a timely manner, then, after initiating a particular case, the likelihood of minimising the liability using the statutory instruments can only be negligible.

Head of the EU and Competition Law practice at *PwC Legal Latvia*

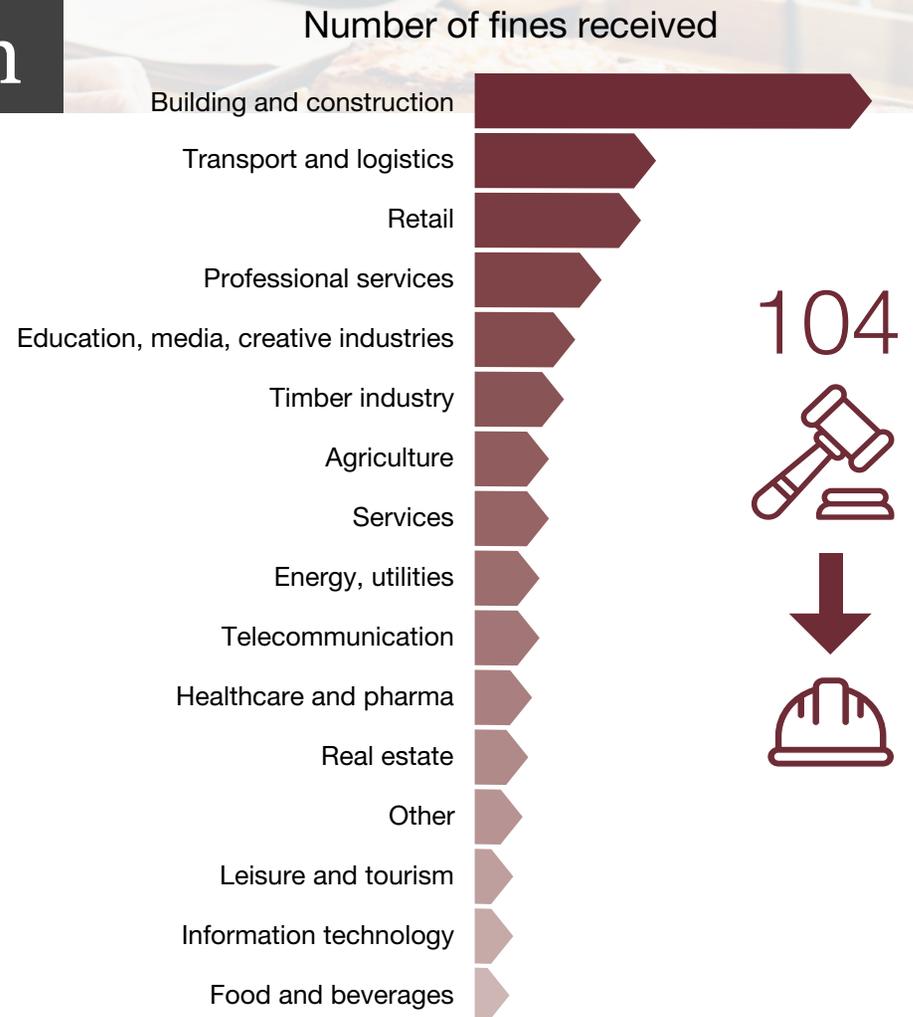


In Latvia, the CC imposed the highest ever total fine in 2009 for the identified prohibited agreement between five companies: SIA Samsung Electronics Baltics, SIA RD Elektronics, SIA Proks, SIA Elkor Trade, SIA Rota and K. The fines amounted to EUR 9,423,162.

Industries fined most often

The companies operating in the construction industry have been fined the most – a total of 104 times.

Many of the fined companies operate in the trade, transport, logistics and transport sectors.





Severity of rulings

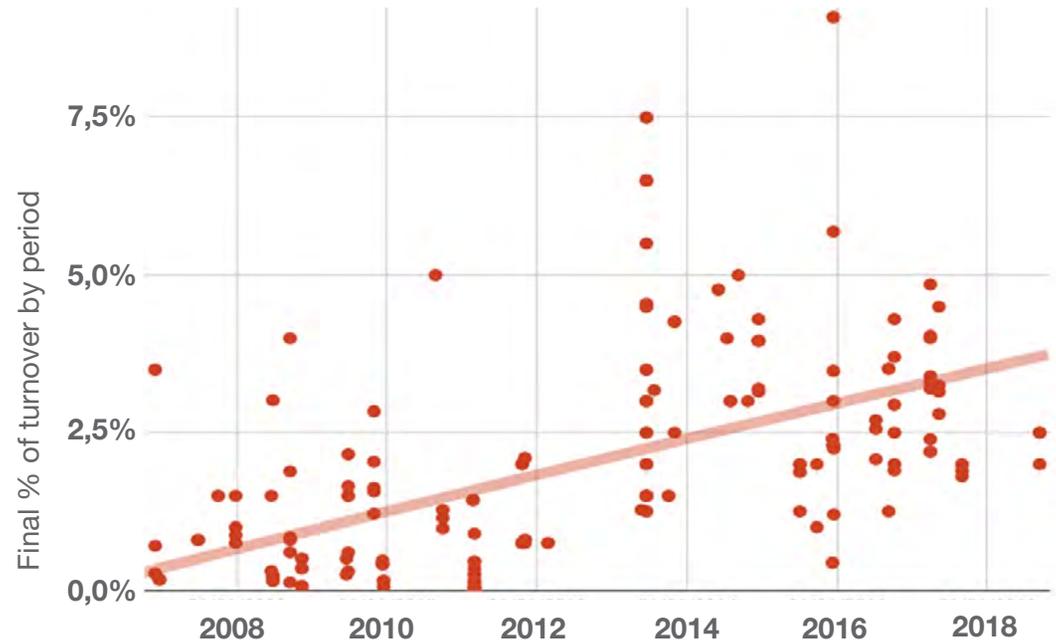
Fines show an increasing trend over the years. Total fines between 2002 and 2018, taking into consideration administrative contracts were:



When analysing behavioural aspects of the economy, cost-benefit analysis plays an important role in decision-making. The prohibition set forth in the law and a large fine do not have any consequences if the possibility of detecting the violation is negligible or if the fines are applied inconsistently. Law-abiding companies expect that the

competition supervisor will punish those who benefit illegally at the expense of the welfare of the public. Thus, the determination and severity of the competition supervisor reinforces the functioning of the law and protects the interests that the legislator has empowered it with protecting.

Final % of turnover by period on average



How are fines calculated?

	Fines for violating the EU Competition Law (http://ec.europa.eu/competition/cartels/overview/factsheet_fines_en.pdf)	Fines for violating the Competition Law of the Republic of Latvia (Regulation No.179 of 29.03.2016 on Procedures for Determining a Fine)
Basic fine	Percentage of value of relevant sales (0-30%) x Duration (years or periods less than one year) + 15-25% of the value of relevant sales: additional deterrence for cartels	Prohibited vertical agreement or a prohibited horizontal co-operation agreement - up to 0.5% of turnover Abuse of a dominant position and prohibited vertical agreements on retail price - 0.5-1.5% of turnover Cartel agreements and prohibited agreements restricting import/export - 1.5-7% of turnover + Duration 1-5 years - 0-0.5% of turnover 5< year - 0.5-1% of turnover
Increased by	Aggravating factors e.g. ring leader, repeat offender or obstructing investigation	Aggravating factors (ring leader, repeat offender, obstructing investigation) Increase of fine in order to exceed income from infringement
Decreased by	Mitigating factors e.g. limited role or conduct encouraged by legislation	Mitigating factors e.g. the violation discontinued, voluntarily eliminated negative effects, active cooperation, non-implementation of the violation, turnover in the market < 10% of total turnover
Subject to overall cap	10% of turnover (per infringement)	10% of turnover
Possibly further decreased by	Leniency: 100% for the first applicant, up to 50% for next, 20-30% for third and up to 20% for others	Leniency: 100% for the first applicant 30-50% for next 20-30% for others 50% if other cartel reported
	Settlement: 10%	Settlement
	Inability to pay reduction	

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More accurate and clearer rules on the application of fines enable the company to drive its business in a more appropriate way strategically, reducing the risks of corruption as well as the factors that affect the cash flow and decrease company's value.

Raimonds Dauksts
PwC Director, Business advisory



The authority has a significant discretion in determining the fine. The laws and regulations provide for several possibilities to adjust the calculated fine by reference to the actual circumstances of the case. Fines can be reduced or increased widely, which third parties can use to their benefit. In 2018, the authorities of individual Member States (Czech Republic, Italy, UK and Spain) published guidelines on setting fines, which ensure a significant transparency of the process and strengthens accountability of the competition authority.

Since 2002, 43% of the originally calculated fines have been reduced already at the time of the application of the fine, based on considerations of proportionality and effectiveness, which is not provided for in the special Cabinet Regulation on the procedure for determining the fine.

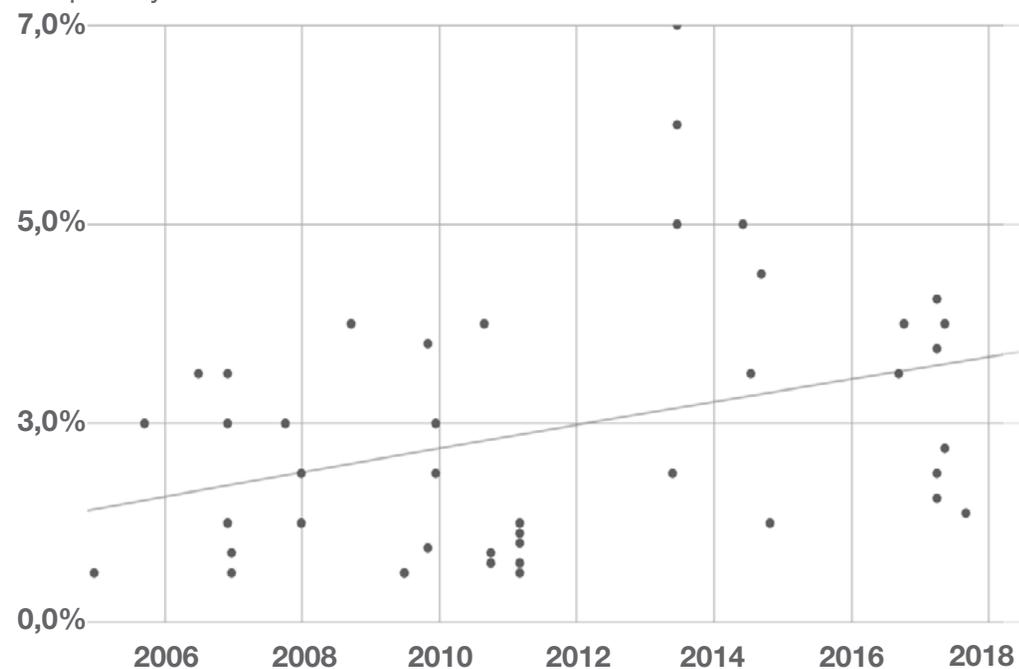
Severity of punishment for especially serious violations

The aggregated data show that in recent years, decisions on especially serious infringements have increased, with trade and construction companies, as well as some recreation related companies prevailing. Since 2004, the level of fines imposed, which are determined by reference to the seriousness thereof, consequences and role of the offenders, has increased insignificantly, although the number of violations remains considerable.

Undertakings cannot compete on the merits if there are safe havens for anti-competitive practices [...] Undertakings therefore have a disincentive to enter such markets, to exercise their rights of establishment, and to provide goods and services there. Consumers based in Member States where there is less enforcement miss out on the benefits of effective competition enforcement.²

It should be noted that there has also been a growing average duration of investigating especially serious violations. Between 2008 and 2011, the duration was 274 days, whereas between 2014 and 2018, the duration was 510 days.

SUM of penalty

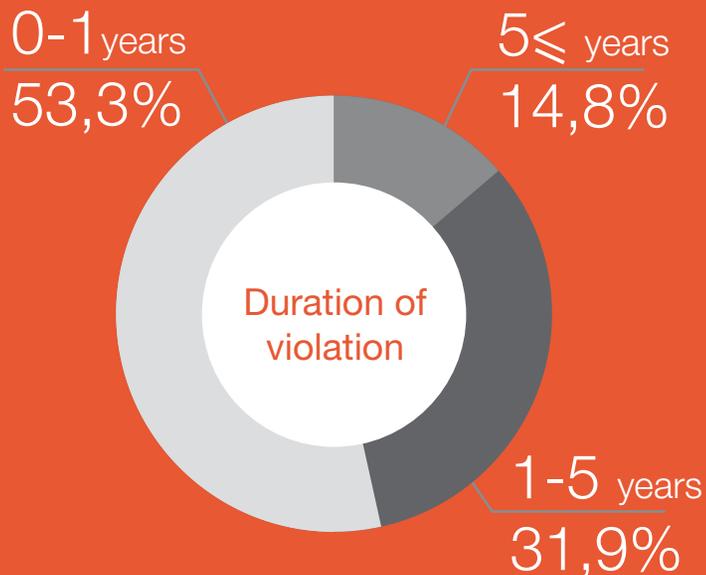


² Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market

Duration of violations

510
days

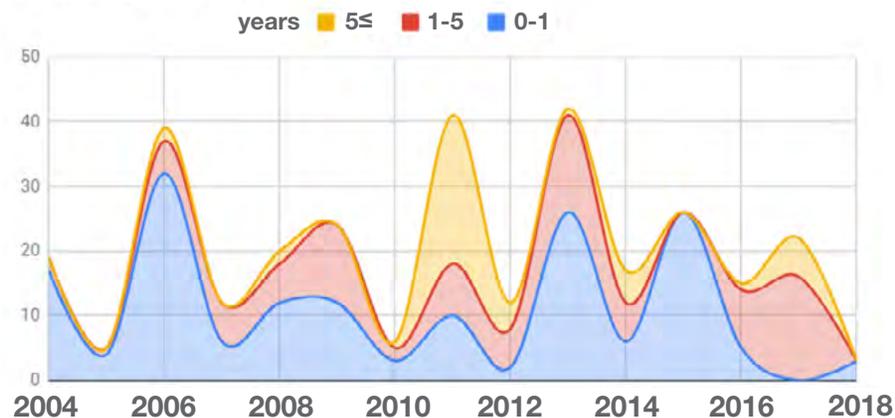
Duration of the examination of particularly serious violations



Historically, the majority of the identified violations and rulings related to the violations that had been committed within a relatively short period of time – up to one year, however, in recent years, more and more violations are being identified, which have been committed for up to five years or more.

Duration of the investigation of especially serious violations

Entities were subject to fines mostly between 2011 and 2013. During this period, most of the violations, which had lasted for more than one year, have been identified.



Leniency programme

Companies have an opportunity to cooperate with the CC to get a reduction of the fine. Concurrently it is possible*



for the company, whether or not involved in the cartel, to voluntarily submit evidence of the violation to the CC and obtain full release from the fines, as well as be released from prohibition to take part in public procurement (Section 42, Paragraph one, Clause 6 of the Public Procurement Law);



for the company that may not qualify for being fully released from fines (for example, the company has initiated the violation, the CC had already initiated an investigation into the violation or another company has reported the violation), to cooperate with the CC and receive a reduction of the fine.

* The regulation of the leniency programme can be found in Section 12-1 of the Competition Law, whereas the detailed terms of the leniency programme are contained in the Cabinet Regulation No. 179 "Procedures for Determining the Penalties for the Violations of Section 11, Paragraph one and Section 13 of the Competition Law and for Violations provided for in Sections 5, 6, 7 and 8 of the Prohibition of Unfair Retail Practices Law" of 29 March 2016.

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Businesses have not been using the *Leniency Programme* actively because previously imposed fines had not changed the culture in general, in addition, there are ample opportunities to reduce fines.

Māris Butāns
Head of the EU and Competition Law
practice at PwC Legal Latvia

Frequency and reasons for the reduction of the fine



Mitigating circumstances



Other



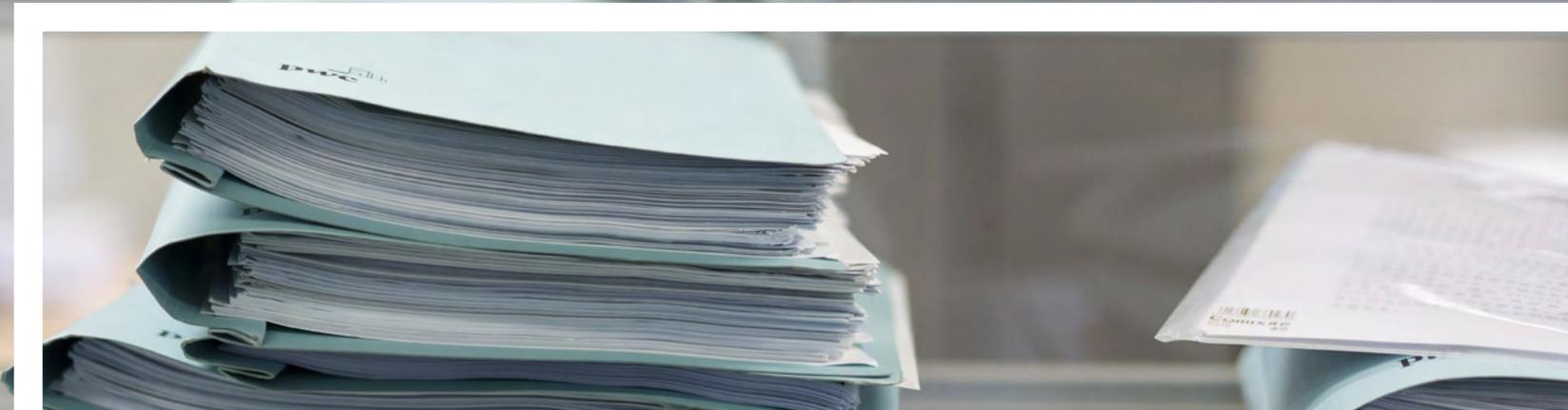
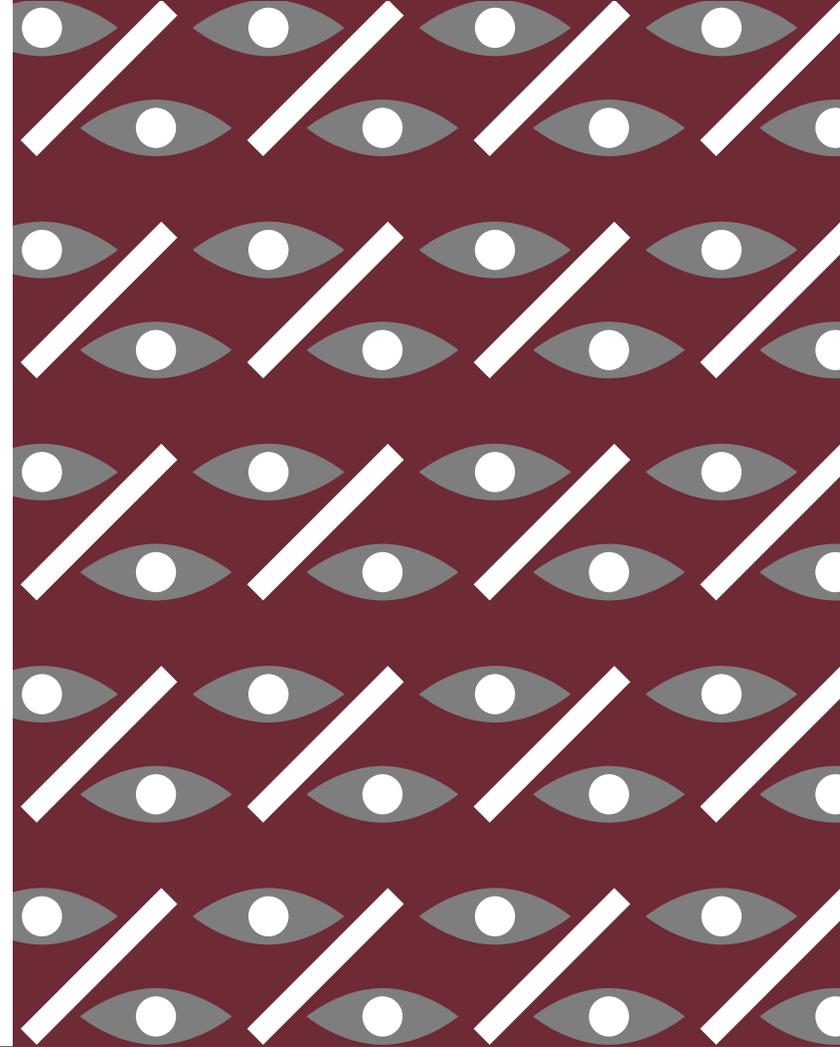
Administrative agreement



Leniency programme



Settlement

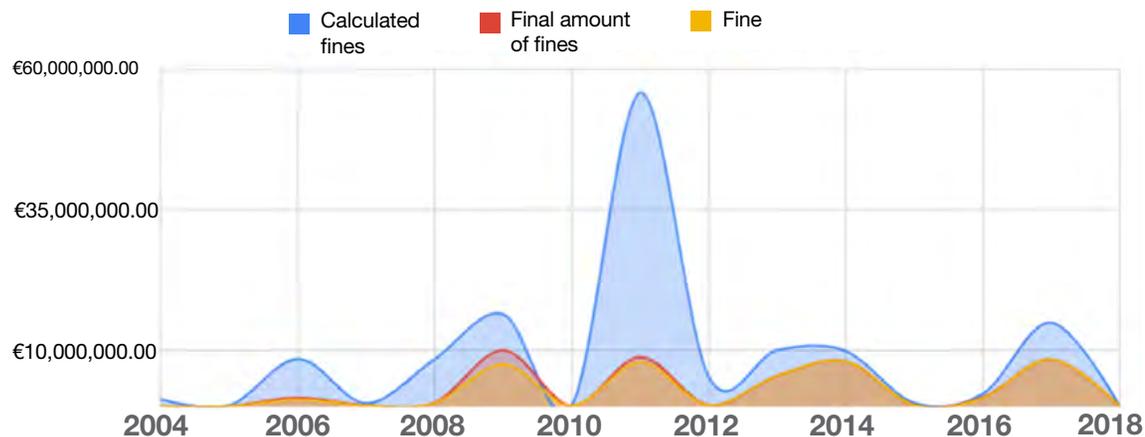




Since the end of 2008, when the leniency programme was introduced in respect of the 218 fines imposed on companies, in 29% of cases, the CC acknowledged that liability mitigating circumstances existed; in 41% of cases, the fines were reduced because the company had a low turnover on the relevant market or the amount of the initially imposed fine would have been disproportionate or ineffective, in 6% of cases the leniency programme was used, whereas in 4% of cases the offenders admitted their fault and settled with the CC, in 10% of cases, administrative agreements had been entered into.

The chart describes the three stages in determining the final fine. In the first stage, the fine is calculated according to the seriousness of the violation, the consequences and the roles of the offenders. In the second stage, the fine is determined in the ruling identifying the violation. In the third stage, the fine that the company actually has to pay after entering into the administrative agreement is determined.

Stages of setting fines



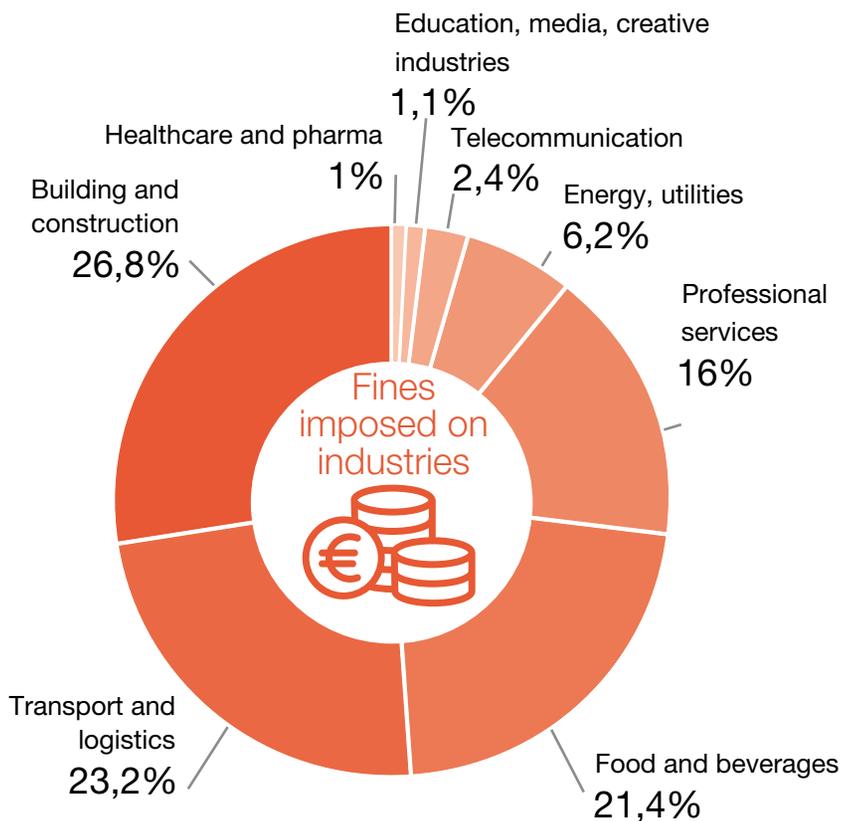
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An administrative agreement should be made more substantive in terms of policies and future-orientation, the actual performance of the agreement should also be examined in substance.

Jānis Lagzdiņš
PwC Legal managing partner



Rulings of the Competition Council by industry sector



Total reduction as a result of entering into administrative agreements:
3 974 077

Reduction



9x 19x 11x
In case of administrative agreement



The impact of the quality of supervision on the business environment

Motivation on the part of investors to make investments in the market where supervision is weak or rigid

- Interest on the part of investors is facilitated by clearly defined, predictable and transparent rules. An environment that has not been transparent for a long time can deter investors from investing in the region in general. Violations should be assessed not only within the scope of the industry but at national level.
- A weak regulator lessens the interest on the part of investors about the relevant country, because there are significant risks that the local market participants may use to strengthen their strong market position (e.g., with suppliers or subcontractors) to bar new competitors from entering the market. It is not uncommon that investors are looking at several countries before investing. Often investments in industrial production and trade pay off in five to seven years. The legal framework is one of the key arguments for selecting a region, so it is very important for the region to be more attractive to its neighbours so that such investments are not lost.
- Through improving and streamlining the legal framework it is not only investors who benefit; a more favourable and fairer environment also increases the interest of the local entrepreneurs to develop in domestic as well as export markets.

Impact of the application of laws on the company's value

- A vague fine system and imposing thereof, changes in business-related laws may not only affect the company's value, but may lead the company to insolvency in a legal dispute.
- More accurate and clearer rules for the application of fines enable the company to direct its operations strategically better, reducing corruption risks.

Barriers to entrance or development, if cartels exist in the market

- Any kind of free market and restrictions imposed on competition, including cartels, create significant barriers and demotivate prospective investors to enter the national market.
- A cartel is formed by larger or dominant market players, which agree on a higher price or a specific market share or otherwise artificially increasing the price.
- It is less common for the strongest market players to hold down the price for a longer time forcing weaker market participants to insolvency and increasing the market share of the strongest players.
- In some cases, a regional or price range cartel is created, which defines the boundaries of individual market players, resulting in customer allocation. Later, a higher price is applied to the particular region or level.
- The prevailing pricing in public procurements often leads to the formation of cartels between customers of goods or services and particular suppliers of goods or services, creating unfair practices and a barrier.
- In the long run, the biggest losers are customers who receive a limited offer at a more expensive price compared to free competition circumstances.



The current regulatory framework does not provide for effective enforcement as supported by the large number of violations.

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Conclusions and recommendations

For the supervisor

Clear and uniform requirements for everyone

A competitive environment is one of the preconditions for promoting foreign investments in Latvia. Clear criteria and transparent principles of imposing fines will definitely provide a clear picture to existing as well as prospective market players, as well as reduce corruption risks.

The role of a supervisor and the ways of controlling market participants may change over the years. The imposition of fines

is not nor can it be the main means of ensuring fair competition. It must have understandable, reasonable and appropriate rules of the game. Such criteria make it possible to reduce the risks of corruption.

Cooperating with local and regional multinationals, best practice criteria should be developed and the necessary improvements should be made to make the environment more attractive.

The cooperation model “Give advice first”

The role of the supervisor and regulator should be aligned with the objectives and circumstances of national and economic development. Therefore, just like the State Revenue Service once came to a decision to revise its current approach, the CC should distinguish between deliberate violations and negligence or ignorance by differentiating the perpetrators.

According to best global practices, the controlling public institutions must function as service organizations that primarily advise companies, enabling them to improve their business and invest the money they earn in development rather than paying fines, promoting mutual respect between the State and taxpayers, and ruthlessly targeting offenders.



Conclusions and recommendations For companies

Awareness of risks and risk management

The possibility of being fined affects the value of the assets of the company's shareholders. In order to ensure compliance with the competition law in companies, employees' understanding of prohibited activities should be improved, and the company's management must take into consideration the basic principles of competition in decision-making.

Businesses have every right to submit their proposals and ideas on how to improve supervision, which facilitates the dialogue.

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We should put in more effort aimed at developing the criteria for better supervision in cooperation with the largest Latvian companies.

Zlata Elksniņa-Zaščirinska
PwC Managing partner



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