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The Competition Council of Latvia (CC) currently employs three economists who provide economic support during case investigations and are involved in sector inquiries. The role of economic analysis in competition cases still has room for improvement. On the one hand, according to the CC, parties could provide their economic analysis earlier in the process. On the other, lawyers argue that economic arguments could play a bigger role in the CC's decisions. However, there seems to be a consensus that the CC's main challenge is retaining its most experienced professionals.

Forced self-isolation during the covid-19 pandemic did not materially impact the CC's operations, as the CC was quick to use online meetings during the pandemic. However, the number of merger filings dropped significantly in spring 2020.

This article is based on interviews with prominent competition law practitioners from the law firms Cobalt, Ellex, Poga.Legal, Sorainen and TGS Baltic as well as with the economist team of the CC.

The impact of covid-19

Our interviewees unanimously agree that the CC has successfully managed to adapt to the covid-19 situation. The CC explained that remote work was already possible before covid-19. During the pandemic, all meetings have been happening online, and our interviewees were generally content about that. One of the benefits of online meetings – mentioned by legal professionals – is that it is easier to set up meetings with the CC at a shorter notice than previously with physical meetings.

Due to covid-19, the number of merger filings contracted by about 55 per cent. Moreover, some parties asked to stop the process of ongoing investigations until further notice. Some of our interviewed lawyers noted that it is difficult to assess the value of transactions in an uncertain environment. This means that some acquisitions were put on hold. It is expected that some transactions have simply been postponed, but it is also recognised that covid-19 may have resulted in structural changes in certain markets.

The role of economics in competition cases is evolving

In 2019, the CC adopted 16 decisions on mergers – two of them went into Phase 2 investigations – in all cases without detecting any possible threats to competition and allowing these merger transactions. In late 2018, the CC prohibited an acquisition of a convenience store by SIA MAXIMA Latvija, a retail chain operator. However, the case is still ongoing in process in court. The CC noted that the parties do sometimes involve economists but usually it happens in court proceedings. It would be beneficial and effective to have a more substantive discussion on economic aspects earlier in the investigation process.

One recent example where economists were engaged early in the process is a network share between two mobile operators Bite and Tele2 mainly connected with the rollout of 5G network infrastructure in Latvia and Lithuania. Our interviewees expect economic analysis to play a major role in this assessment process, which is still in its early stage.

Overall, law firms share an opinion that the CC prioritises legal arguments over economic ones, hence they usually do not consider engaging in more sophisticated economic analysis in merger and abuse of dominance cases. However, the CC views the situation quite differently – the CC told us that they see value in economic analyses and especially when they are provided early in the process. Hence, the CC would be very pleased if parties included more thorough economic assessments in the initial phases of investigations, especially in merger filings.

Lack of domestic competition economics professionals was mentioned as one of the barriers for stronger involvement of economists in competition cases. Hence, in most competition cases, the competition economists employed by the parties were foreigners and the CC is comfortable with submissions made in English.

The Competition Council has adopted its first ever decision on interim measures in an alleged abuse of dominance case

In 2019, the CC used interim measures for the first time in its history in an abuse of dominance investigation. The case concerned waste management procurement in the city of Riga. Historically, there were four service providers in the market, but Riga municipality decided to establish the public-private partnership to entrust waste management services in Riga for a 20-year period to one market participant – AS Tirīga. The CC analysed whether

waste management is a natural monopoly (and hence, market consolidation could be justified), but the economic evidence did not support such a hypothesis.

Hence, on 9 September 2019, the CC adopted a decision on interim measures. The interim measures imposed several obligations on Riga City Municipality and SIA Getliņi EKO, including immediate termination of implementation of the concession agreement on collection and transportation of unsorted and separately collected household waste. The municipality appealed the decision of the Authority on interim measures in the court, and the proceedings ended in favour of the CC.

The Competition Council struggles to retain its most experienced professionals

In 2019, the CC expanded its team of economists from two to three. However, our interviewees share the opinion that the CC's main challenge is retaining its most experienced economist professionals. Because of highly uncompetitive salaries, the CC suffers from a high staff turnover. Since 2019, at least 15 people have left the authority, including some of its very experienced staff and the chairwoman of the CC, who was also an economist and was providing hands-on input to the CC's economic arm.

The ECN Directive will be implemented in 2020 and the CC hopes that it may help improve the funding of its institution. But the CC also wonders whether the government's priorities during the covid-19 pandemic situation will find space for competition enforcement.

In addition, the CC welcomes and follows developments of the EC DG COMP. In particular, according to the CC, the European Commission's market definition notice review is very welcome in Latvia, for example, in relation to clarifying issues of asymmetric constraints and marginal users.

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Mindaugas Cerpickis acts as an economic consultant at Copenhagen Economics specialising in helping clients in competition and dispute resolution cases. Cerpickis has worked on a number of disputes, merger and abuse of dominance cases, including cases where sector regulation and competition economics intersect, for example, in postal, energy and telecom sectors. Before joining Copenhagen Economics, he worked as a management consultant.



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