

### Redefining the concept of dominance in Latvia

◆ Zane Veidemane



For decades dominant companies have been burdened with a special responsibility not to allow their conduct to impair genuine competition on the market. If distortion of competition of such dominant companies is identified, a significant fine (in Latvia and on the EU level - corresponding to up to 10 percent of a company's worldwide yearly turnover) can be imposed by national or EU competition authorities. Thus defining dominant position is of paramount importance.

Latvian competition law currently states that for a company to be found in a dominant position the market share of that company must be at least 40 percent and that the company must be capable of significantly hindering, restricting or distorting competition in the particular market by acting partly or fully independently of its competitors, clients and consumers.

A company's market share is calculated as a proportion of the goods the company offers on the particular market in relation to the overall like goods offered on that market. At the same time, it is undisputable that a company that has a market share of less than 40 percent can in certain circumstances act partly or fully independently of its competitors, clients and consumers and significantly hinder, restrict or distort competition. Unilateral activities of non-dominant companies do not, however, constitute breach of Latvian or EU competition laws.

In order to secure that all the companies which significantly hinder, restrict or distort competition on the market are caught by the competition law, Latvia's Competition Council has initiated a procedure of amending the existing definition of the "dominant position." If the proposed amendments are supported by Parliament, a company will be found in a dominant position

whenever it is capable of significantly hindering, restricting or distorting competition in the particular market by acting partly or fully independently of its competitors, clients and consumers. Companies with a market share of 40 percent will be automatically declared as having dominant position unless, and until, it is proven that they are not in a dominant position.

The amendments would also clarify the definition of a dominant position utilized by the Latvian Competition Council in line with the one adopted on the EU level - namely, that enterprises are in a dominant position when they are capable of acting without taking into account their competitors, purchasers or suppliers.

It must be stressed, however, that the mere existence of dominance is not an abuse under EU or Latvian competition laws - it is abusive exploitation of a dominant position that has been prohibited both on a national and EU level.

Direct or indirect imposition of unfair purchase or selling prices or other unfair trading conditions; limitation of production, markets or technical development; application of dissimilar conditions to equivalent transactions with other trading parties, as well as making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts is always considered abusive by Latvian and EU competition authorities.

*Zane Veidemane is associate at Kronbergs & Čukste, a member of Baltic Legal Solutions, a pan-Baltic integrated legal network of law firms which includes Teder, Glikman & Partnerid in Estonia and Jurevicius, Balciunas & Bartkus in Lithuania, dedicated to providing a quality 'one-stop shop' approach to clients' needs in the Baltics.*

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