

## **Cabinet of Ministers of the Republic of Latvia**

3 February 1998

Regulations No. 37 Riga

(Minutes No.5 § 7)

### **Procedure of Validation of Agreements of Market Members**

Issued in accordance with  
Article 9 (2),  
Article 15 (3) and (4), Paragraph 2  
of the Competition Act

#### **I. General provisions**

1. These regulations establish:

1.1 the procedure by which the Competition Council (hereinafter referred to as the Council) makes a decision on recognition of validity of agreements of market members referred to in Article I 5 of the Competition Act.;

1.2 agreements of separate enterprises (entrepreneurial unions), which shall not be notified to the Council.

2. In the case of absence of the respective Council decision, agreements that have been concluded between market members and whose characteristics correspond to the characteristics set in the first part of Article 15 of the Competition Act shall be prohibited and void from the moment of their conclusion (except for agreements or groups of agreements mentioned in the Chapter III of these regulations).

#### **II. Procedure of submission of notifications**

3. If the market members that have concluded an agreement suggest that the agreement corresponds to the requirements of Article 15 (2) of the Competition Act and its validity could be recognised they submit a notification on recognition of validity of the agreement (hereinafter referred to as the notification) to the Council.

4. The notification on recognition of validity of agreement may be submitted also after this agreement has been examined at the Council upon initiative of other persons and has been regarded as a breach of the Competition Act, and the Council decision to interrupt the illegal practice has been adopted.

5. The notification is submitted by one or several parties of the agreement. If a notification is submitted only by some of parties of the agreement they shall inform all other parties.

6. The notification shall be signed by persons who have the respective authority. Powers of attorney shall be added to the notification. An authorised person who will keep contact with the Council shall be indicated in the notification.

7. A date when the notification is received by the Council or, in the case when the notification has been sent by registered mail, a date fixed on the stamp shall be considered a date of submission of the notification.

8. The notification shall be supplemented by:

8.1 information on parties of the agreement and their related enterprises (name, address, other details, forms of activities);

8.2 information on content (contract, decision or its drafts) and term of the agreement;

8.3 information on the objective and positive and negative consequences of the agreement (conformity to the provisions of Article 15 (2) of the Competition Act);

8.4 definition of the particular market affected by the agreement under Article I (4), (5), (6) of the Competition Act, evaluation of the market share of the parties of agreement under Article I (I 2) of the Competition Act and influence of an agreement on competition in this market.

9. For the purposes of these regulations the following enterprises shall be considered related enterprises:

9.1 enterprises, in which the parties of agreement have dominant influence;

9.2 enterprises that have dominant influence in the parties of agreement;

9.3 enterprises, in which the parties of agreement and enterprises mentioned in the Paragraphs 9.1 and 9.2 of these regulations leave dominant influence;

9.4 enterprises, in which the parties of agreement and enterprises mentioned in all Paragraphs 9.1, 9.2 and 9.3 of these regulations separately or jointly have dominant influence.

10. Documents added to a notification shall be originals or copies verified in the established procedure.

11. Submitters of the notification indicate which part of information is confidential and shall not be disclosed to the third parties and other parties of agreement.

12. The Council approves and publishes in the newspaper "Latvijas Vestnesis" guidelines for drawing up the notification on concluded or projected agreement.

### **III. Agreements on which the Council shall not be informed**

13. The Council shall not be informed, if:

13.1 the parties to the agreement are farmers, farmer companies (co-operative, shareholders, collective) and their unions, if a subject of an agreement is production, storage, first treatment and sale of agricultural products and if an agreement does not provide for fixing of identical prices;

13.2 market share of goods - a subject of agreement (including market of identical --or substitute goods produced or offered by all parties of agreement) does not exceed 5% of the particular market that could be affected by the respective agreement;

13.3 only two enterprises are parties to the agreement and the agreement restricts one party's freedom of setting prices and choice of rules of the business activity, by which it could sell goods received from the other party, or puts restrictions on use of the intellectual property - patents, samples of design, trade marks, and other manufacturing secrets;

13.4 the only subject of an agreement is creation and common use of standards and types (prototypes), common research and development or specialisation in production of goods (including agreements necessary for achievement of this goal), if market share of a good - subject of this specialisation - does not exceed 15% of the particular market and if total annual turnover of parties to the agreement does not exceed 10 million Lats.

14. The agreements mentioned in Article 13 of the regulations shall not be considered a breach of Article 15 (1) of the Competition Act also in cases when two years after coming into force of the agreement the above-mentioned market share or turnover has increased by no more than 10%.

15. The Paragraphs 13.3 and 13.4 are valid providing that an agreement corresponds to the provisions set for in the regulations of the Cabinet of Ministers on release of certain types of agreements from prohibitions expressed in Article 15 (1) of the Competition Act.

16. In the cases when due to unexpected circumstances the agreements, mentioned in Articles 13 and 14 of these regulations, have negative effect on competition, the Council may prohibit them. The Council shall not impose a fine on parties of agreement for performance of prohibited actions before submission of the notification.

#### **IV. Procedure of examination of notifications**

17. After receipt of the notification the Council shall evaluate the submitted information and, if necessary, request additional information from the parties of agreement. The Council may also request an information from interested third parties.

18. The Council shall examine a case within 30 days after receiving of complete information.

19. The Council may adopt a decision on extension of a term of examination of a case up to five months in the cases when experts shall be invited and large amount of additional materials shall be requested and examined. The Council informs submitters of the notification on that.

20. The Council may publish in the newspaper "Latvijas Vestnesis" an invitation to interested third parties to submit their written conclusion on the particular agreement in the term set by the Council.

21. During examination of the case, parties of agreement as well as interested third parties shall have rights to get acquainted with materials of the case, except for information, which the Council shall not disclose in accordance with the normative acts.

22. Parties of agreement as well as interested third parties may request the Council to listen to them as regards the particular agreement.

23. The Council may use an information that has been received carrying out an investigation of the particular agreement only to examine this agreement. The Council is obliged not to disclose the received information because it could affect legal interests of the enterprises in keeping their commercial secrets, except for cases when the legislation provides for a different procedure.

#### **V. Adoption and announcement of the decision**

24. The Council pursuant to the legal objectives set in Article 2 of the Competition Act adopts a decision on validation of agreement, if it corresponds to the requirements of Article 15 (2) of the Competition Act.

25. The Council shall indicate in the decision:

25.1 a date of coming into force of the agreement (not earlier than a date of submission of the notification);

25.2 a date until which an agreement is valid;

25.3 additional conditions and duties (if such are established), which shall be considered by the parties of agreement.

26. The term of the agreement may be extended if the parties of agreement fulfil provisions of Article 15 (2) of the Competition Act and the above-mentioned agreement, and have submitted to the Council a written request to extend its decision.

27. The Council may cancel or change the adopted decision or to prohibit actions of the parties of agreement, if.

27.1 any of facts that have served as a basis for adoption of the decision has changed;

27.2 any of provisions or duties set in the decision is not fulfilled;

27.3 the decision has been adopted on the basis of inaccurate or purposefully false information;

27.4 parties of an agreement maliciously use a decision of the Council.

28. In the cases mentioned in the Paragraphs 27.2, 27.3 and 27.4 of these regulations the Council may cancel or change the adopted decision as of the day of its coming into force. Each such case shall be adequately justified.

29. If the notification submitted by the parties of agreement as well as requested and received additional information is not a sufficient basis for validity of the agreement the Council shall give a written justified refusal to the parties of agreement. At the same the Council announces that the case is continued as a case of investigation of a breach of the Competition Act in the procedure set by the Cabinet of Ministers.

30. An information of the Council decisions adopted in relation to the agreements of the market members shall be published in the newspaper "Latvijas Vestnesis", keeping confidentiality.

## **VI. Final provisions**

31. The parties of agreement shall submit a notification on any agreement, which is in force on 1 January 1998 and is prohibited according to Article 15 (1) of the Competition Act, according to the requirements of the Chapter 11 of these regulations until 31 December 1998, if the parties wish the Council to make a decision on validation of the agreement in accordance with the requirements of Article 15 of the above Act.

32. If a requirement set in Article 31 of these regulations is not fulfilled a responsibility for breach of the prohibition of agreements set for in the Competition Act comes into force as of 1 January 1999.

33. The provisions mentioned in Articles 31 and 32 of the regulations shall not prevent the Council from carrying out the necessary research and elimination of the breach of the prohibition of agreements.

Prime Minister  
On behalf of the Minister of Economics  
Minister of Agriculture

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