



How to Behave Towards the Competition: Price Negotiations & Trade Terms

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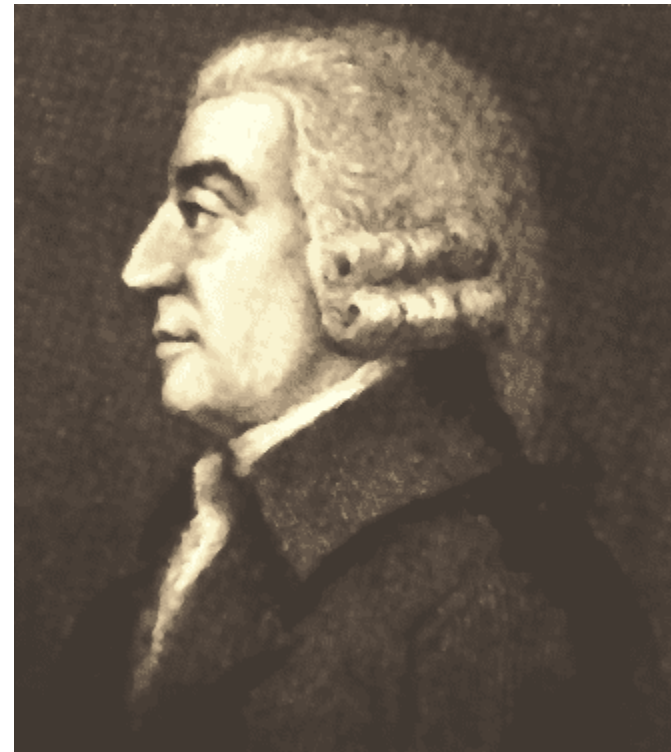
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Part one: General

- Principles, aims and history of competition law
- Some basic concepts



Pillars of competition law

1. Prohibition of anti competitive agreements
2. Prohibition of abuse of the dominant position
3. Merger control
4. Control of state aid

Applicable laws and other sources

- EU law
- Latvian laws:
 - Competition Law (in force since January 2002, amended)
 - Regulations of the Cabinet of Ministers

Who: Market participants

- Any natural or legal person
 - Legal persons: whole group
 - Also self-employed, individual merchants
- Associations of market participants

- Criteria:
 - Is engaged or is preparing to engage in the economic activities in Latvia
 - Economic activities: any sales of goods/provision of any services (except for public services)

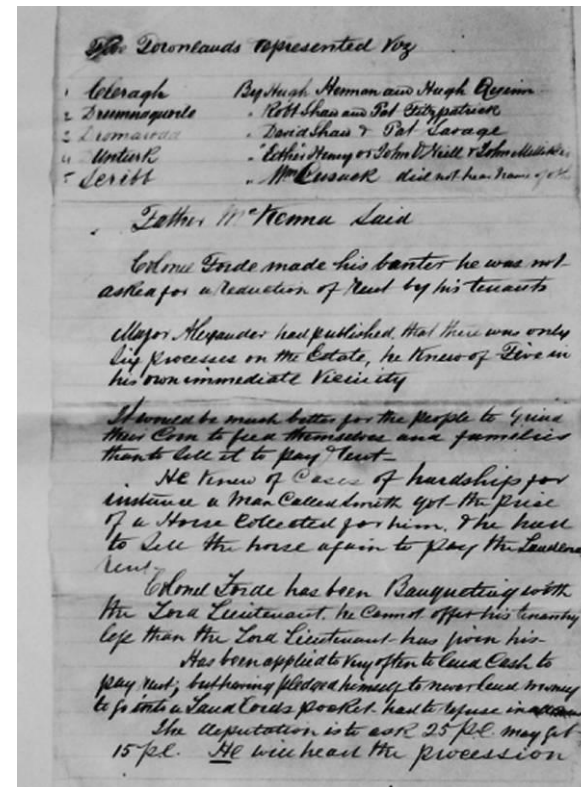
Relevant market

- Purpose of relevant market definition
 - to identify the competitors, consumers, customers of the respective market participants
 - to determine the boundaries within which the market participants are competing or are situated in circumstances where they can compete

- Definition of the relevant market. Two Pillars:
 - Product market
 - Geographic market

Agreements

- The rule
- “Agreement”
- Prohibited agreements – black list
- Horizontal and vertical agreements



The rule

- Agreements with an object or effect of hindrance, restriction or distortion of competition in the territory of Latvia are prohibited and void from the moment of conclusion between market participants
 - Principle of invalidity of the agreement
 - Object or effect?
 - Agreement

Agreement I

- “Traditional” agreement
 - It does not have to be a written document
 - Does not have to be binding (also gentlemen's agreement)
 - Does not have to be fulfilled
 - But has to be concluded between "independent entities" (that is, does not relate to mutual agreements between parent and subsidiary companies)

Agreement II

- **Decisions of associations of undertakings:**
 - Recommendations, common standards, models of action
 - The form and legal consequences bear no significance, the participant's attitude towards such decisions is important

- **Concerted practices:**
 - Without arrangement – the market participants does not inform each other about their activities
 - Type of company coordination, which – without knowingly set out in a form of an agreement, threatens the competition, includes practical cooperation of companies

Prohibited agreements – "black list"

- Agreements, which:
 - Directly or indirectly fix prices for purchase or sale, or any other trading conditions
 - Restrict or control production, markets, technical development, or investments
 - Divides markets or sources of supply
 - Applies unequal provisions in equivalent transactions with third persons, creating for them disadvantageous conditions in terms of competition
 - Make 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

Exchange of information

- European Commission in case of *IFTRA Rules on Glass Containers*:
 - It is contrary to provisions of Article 81 that the producer contacts his competitors in relation to significant elements of his price policy, for example, pricelists, discounts and sale conditions applied by him, rates and dates, when they are changed, and special exceptions, which he can award to specific clients.

Market and/or client division

- Purpose of market and/or customer division is to provide the members of a cartel with a possibility to maintain an artificially dominant or even monopoly position in a definite geographical territory

Vertical agreements

- The competition may be limited:
 - among various brands (*inter-brand competition*) or
 - competition between the distributors of goods of one and the same brand (*inter-brand competition*)
- Most harmful agreements to the competition are those agreements which influence the inter-brand competition, rather than between the distributors
 - However, limitations to the intra-brand competition can be harmful in case the inter-brand competition is limited at the same time

Horizontal agreements

- Members of a cartel engage in cartels in order to be able to rely on their existing market share, on the existing clients and they do not need to offer new or better products for competitive prices. Accordingly, the consumer loses because he pays more for goods of worse quality
- Price fixing if it is only a purpose or recommendation influences the competition because as a result of such decision, all participants can foresee with a reasonable degree of certainty what price policy will be adopted by their competitors, especially if the fixing of a target price is accompanied by a possibility of control and sanction

Penalties

- Competitors – 10%
- Non-competitors – 5%

- Civil liability

Abuse of dominant position

- imposition or application of unfair and unjustified provisions regarding the return of the goods, unless the returned goods are:
 - Goods of bad quality
 - New goods, which were not previously known to the consumers provided that the increased supplies thereof were initiated by the supplier

Abuse II

- imposition or application of unfair and unjustified payments for the presence of the delivered goods at a retail sales point, unless such payments are justifiable as marketing costs for new products, which were not previously known to the consumers

Abuse III

- imposition or application of unfair and unjustified payments in exchange for entering into a contract, unless such payments are justifiable as costs for entering into a contract with a new supplier, which therefore requires special evaluation

Abuse IV

- imposition or application of unfair and unjustified payments in exchange for delivery of goods to a new, yet-to-be-opened retail point of sale

Abuse V

- imposition or application of unfair and unjustifiably long payment periods for delivered goods

Abuse VI

- imposition or application of unfair and unjustifiable sanctions for the breach of the agreement

Thank you!

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