



SORAINEN

ANTITRUST LAW ASPECTS FOR RETAIL AND FMCG INDUSTRIES – DO'S AND DON'TS

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www.sorainen.com

Who we are?

- Leading regional business law firm with fully integrated offices in Estonia, Latvia, Lithuania and Belarus
- Established in 1995, today SORAINEN numbers more than 100 lawyers
- First law firm in the Baltic States and Belarus where a quality management system has been implemented under ISO 9001 standards
- Advised over 6,000 local and international clients, in nearly 30,000 corporate cases



International awards 1/2

SORAINEN was awarded as

BALTIC LAW FIRM OF THE YEAR



International Financial Law Review (2010, 2009)
IFLR European Awards ▪ March 2009 & 2010 ▪ London, UK



PLC Which lawyer? (2010, 2009)
Law Firm Awards ▪ Jan 2009 & May 2010 ▪ London, UK



Financial Times & Mergermarket (2008)
European M&A Awards ▪ Dec 2008 ▪ London, UK

**SORAINEN won the first ever
BALTIC TAX FIRM OF THE YEAR**



- European Tax Awards 2010 are given for the most innovative, international and cross-border tax advice
- SORAINEN was nominated alongside Deloitte, Ernst & Young, and PricewaterhouseCoopers
- It was the first year when the Baltics were evaluated

What can be illegal?

- EU Competition law and Baltic laws are very similar
- Action by two or more participants (multilateral):
 - Agreement between unrelated undertakings (companies)
 - Horizontal v. Vertical
 - Formal v. Informal
 - Concerted action, not amounting to an agreement
 - Decisions by associations of undertakings
- Individual action (unilateral) - abuse of a dominant position:
 - General dominance in the market
 - New development: Dominance in the retail market
 - Baltic examples - different status
 - Broader global developments

Prohibited agreements

- Agreements – “black list”, object to restrict competition, hardcore cartels
 - Price fixing, market sharing, bid rigging, limiting output
- Agreements potentially anti-competitive (some examples)
 - Joint purchasing, commercialization, joint R&D
- Vertical agreements:
 - Intra-brand competition v. Inter-brand competition
 - Black-list – resale price fixing, export bans
 - Example – alleged Samsung household electronics cartel
 - Threshold of 30% market share for less restrictive agreements

Activities similar to agreements

- Trade associations – black-listed activities, e.g. price fixing:
 - Binding decisions v. Non-binding recommendations
 - Consider economic effects (not just aim and intent)
 - Example – Latvian association of auditors
- Information exchange:
 - Individualized v. Aggregated (statistical)
 - Historical v. Current v. forecasts
 - Content of information – how commercially sensitive is it?
- Concerted action
 - Less formalized, hence more difficult to establish / prove

Abuse of dominant position - classical

- Dominant position:
 - Must be established on a specific relevant market
 - Market shares, and market concentration matter
- Abuse of classical dominant position:
 - Exploitative abuse
 - Unfairly high prices, bundling
 - Exclusionary abuse - examples
 - Predatory prices
 - Tie-in agreements
 - Refusals to supply (to eliminate competition downstream)
 - Price discrimination
 - Cabinet exclusivity

Abuse of dominant position – retail (Latvia)

- Dominant position in retail sector:
 - Less influential position than classical dominance
 - Not yet ability to act independently from competitors, consumers and clients
 - ... but – where market power and dependence of suppliers allows directly or indirectly to impose unfair conditions and harm competition
- Abuse of dominant position in retail sector:
 - Unfair discounts, unfair new outlet payments, unfair marketing payments, unfairly long invoicing periods, etc.
 - Precedent - Maxima Latvia: trade terms for linseed oil, found to be compliant with law

What is going on in the field?

- Lithuania
 - Increased attention on retail and daily consumer goods sectors
 - Recen dawn raids
 - Talk of amending regulation aimed at unfair practices by retailers
- Latvia
 - Market investigations focus on consumer-related industries
 - Lack of certainty about applying dominant retailer regulation
 - More crack-down on cartels recently
- Estonia
 - Increased activity of competition authority in last year
 - Focus on retail sector and several key food production sectors
 - No significant talk yet of regulation concerning dominant retailers

Thank You!

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