INFORMATION SHARING BETWEEN COMPETITORS: LIMITS UNDER COMPETITION LAW

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10 November 2011
ECR Baltic Forum 2011, Riga, Latvia

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Why exchange of information should be regulated?

- Exchange of information matters when it is between competitors
  - However information exchange via third parties may bear risks
- Exchanging information delivers benefits
  - Information assymetry; benchmarking; statistical data for increasing efficiency
- But it also reduces uncertainty, and uncertainty drives competition

The Rules

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- Information exchange that does not harm competition
- Information exchange that has the object or effect **to prevent, restrict or distort competition**
- Information exchange, that, although theoretically liable to affect competition,
  - (i) is beneficial to economic production or development, and
  - (ii) delivers benefit to consumers, and
  - (iii) does not contain unnecessary restrictions, and
  - (iv) does not prevent competition to a <u>significant</u> extent.

- GOOD
- BAD
- GOOD

- Basic principles of Do's and Dont's

Feature	Likely prohibited	Likely permitted
Availability	Private	Public
Timeline	Actual, forecasted	Historical
	Recent?	
Detail	Individualized	Aggregated
Commercial value	Startegic, sensitive	Non-strategic

What action can also be risky?

- Passive receipt of “prohibited” data
  - Unless you publicly and actively distance yourself
- “English clauses”
  - Lower prices, however – transparency increase
- Information exchange through a third party
  - Associations can also be fined; members may need to pay up
  - Market research agencies must observe general safeguards
  - Joint ventures must be cautious about information exchanged with their competitor parents
- Category management agreements
  - Risk of foreclosure of competitors by the category captain; risk of coordination between competing suppliers or distributors

Agreements on standards

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- Standards benefit consumers by driving innovation in other areas, stimulating competition, improved supply conditions, cost efficiency
- Pitfalls to avoid in standardisation:
  - Avoid effective exclusion of specific competitors (actual or potential)
  - Avoid exclusivity for one party to check compliance with the standard
  - Parties to the standardization must be free to develop alternative standards or products;
  - Third parties must have free and fair access to standards
  - Parties' incentive to compete on all other aspects of goods must be preserved

Some recent cases in the Baltics

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- Latvia – paper wholesalers
  - 2003 - direct exchanges of individualized sales amounts data
  - 2004 - exchange through a market research agency
  - Court arguably did not analyse economic effects on competition in sufficient detail; considered oligopoly effects
- Lithuania – Dairy producers “cartel”
  - After first appeal court returned decision for repeated consideration
  - Competition authority increased fines
  - Allegation – monthly exchange of individualized sales quantities information
  - Currently case pending before court

Contacts

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Thank You!

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