

Réponses au questionnaire sur la régulation économique  
*Responses to the questionnaire on economic regulation*

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## Questionnaire on economic sectoral regulation in European Union countries

### I Scope and purpose of economic sectoral regulation

1. Economic sectoral regulation mainly focuses on sectors submitted to European Union' secondary legislation (transport, energy, postal activities, electronic communication, audiovisual media). Are other sectors subject to such regulation in your country?

The State regulates providing of public services as commercial activity in following regulated sectors: 1) energy; 2) electronic communication; 3) postal activities; 4) railroad transport; 5) household waste management; 6) water management.

Another field regulated by economic sector has been pharmacy, and supervision performed over it is included into scope of authority of the Health Inspectorate; Food and Veterinary Service and the State Agency of Medicines. Economic activity in Latvia has also been supervised in competition, mass media, and finance sectors; food production and distribution, and drinks, tobacco and cosmetics sectors.

In addition to sectoral policies regulated by the European Union, public infrastructure, innovations, employment, forestry, fishery, regional development, lottery and gambling sector is also supervised in Latvia.

2. Is the whole set of European Union' secondary legislation for economic sectoral regulation transposed into national law and/or practically implemented?

As far as the court knows, all legal provisions of the European Union, which pertain to economic sectoral planning, is transposed into national legislation.

Within particular sectoral issues, the European Commission commenced infringement procedures against Latvia; however, as decisions of the European Commission are not reviewed in the European Court of Justice, there is no ground to recognise infringement of transposing of laws.

3. Is economic sectoral regulation only aimed at introducing competition in sectors where there is State monopoly? If not, what is its other purposes (implementing an internal market, defining universal service obligations, consumer protection, etc.)?

Basically, economic regulation in Latvia provides joint rules for operation of correspondent sector and consumer protection. Regulation establishes organisation and operation of correspondent sector, open and transparent access to respective sector is ensured, general rights and responsibilities of consumers are established, and competition rights have been specified. For example, the Electricity Market Law stipulates that the purpose of this law is to ensure that all electricity customers are provided with electricity safely and in good quality, in the most efficient possible way, for justified prices; to ensure all customers with the right to choose an electricity trader freely; to promote the production of electricity by using renewable energy resources.

In its turn, the purpose of regulation included in the Energy Law, *inter alia*, is to ensure the energy user with efficient, safe and qualitative energy supply in the

quantity demanded and for justified prices, diversifying the types of energy resources to be used, increasing the safety of the energy supply and observing the environmental protection requirements; to promote efficient use and balanced consumption of energy; to facilitate the use of local, renewable and secondary energy resources.

However, the Electronic Communications Law stipulates that purpose of the law, *inter alia*, is to promote the provision of electronic communications networks and the development of electronic communications services; to promote the development of competition in the provision of electronic communications networks and the provision of electronic communications services; to ensure protection of the interests of the State, users and electronic communications merchants.

4. Is economic sectoral regulation an *ex ante* control, aimed at defining obligations for companies in the regulated sectors *a priori*, or an *ex post* control, aimed at upholding competition provisions in case of infringement?

Economic sectoral regulation is initially directed to supervision and organisation of activity of service providers, namely, *ex ante* supervision, which is aimed at determination of responsibilities (liabilities) of companies in regulated sectors *a priori*. Regulation mentioned also includes provisions, which *expresis verbis* determine competition development in concrete sector as purpose.

Supervision over rules of competition and suspension of infringements as such is regulated particularly in the Competition Law, which is implemented by the Competition Council in Latvia. The Consumer Rights Protection Centre ensures supervision over consumer rights.

5. Has the implementation of an economic sectoral regulation prompted the emergence of competition in the relevant sectors? Did new entrants manage to fit in regulated markets? If not, why?

Communication services, postal services and forestry sectors, where transition from monopoly to free market was implemented, are indicative of the fact that sectoral regulation prompted emergence of competition and development within sectors.

6. Has the implementation of an economic sectoral regulation directly or indirectly lead to the total or partial privatisation of publicly owned companies?

Partial privatisation of particular public companies had been performed, especially in field of telecommunications. However, the state preserved part of property rights in these companies.

At present, privatisation of companies, which have been important for national economy (for example, “Latvijas Pasts” (Latvian Post), “Latvenergo” (electricity trader), “Latvijas Dzelzceļš” (Latvian Railway), “Latvijas Gaisa Satiksme” (air navigation services), etc.) is prohibited by law. However, in some national economy sectors, in which these public companies operate, market is open to other service providers as well, for example, postal services, and in future – electricity supplies.

7. Which economic sectors would you like to address more specifically in terms of regulation?

Present priorities set by the government do not include new plans concerning sectoral regulation. However, it is possible to stress improvement of regulation concerning use of farmlands, supervision of electricity market planned for opening.

## **II Organisation of economic sectoral regulation**

8. Is economic sectoral regulation implemented by one or several independent authorities? If so, on what grounds was this choice made and how is this independence guaranteed?

In Latvia, economic sectoral regulation is implemented by several independent institutions.

The **Public Utilities Commission** (PUC) or the Regulator is institutionally and functionally independent, full-fledged, autonomous body governed by public law which carries out regulation of public services in energy, electronic communications, post, railway transport, municipal waste management and water management sectors.

The Public Utilities Commission controls so that the law “On Regulators of Public Utilities” and special legal acts of the regulated sectors would be observed, when providing public services.

The purpose of establishment of the Public Utilities Commission, which performs its functions independently and is not subordinated to the government or its institutions, is to ensure centralised and uniform review of issues concerning regulation of public services within sectors regulated by the State.

When establishing the Public Utilities Commission as independent institution, provisions of the Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, which pertain to requirements to regulatory institution, were adopted.

**The Competition Council** supervises competition conditions in the market and it is institution subordinated to the Ministry of Economics.

In its turn, the purpose of the **Financial and Capital Market Commission** is to promote protection of interests of investors, depositors and insured persons and development and stability of financial and capital market. The Commission is full-fledged autonomous public institution.

9. Are these authorities independent of the regulated economic sectors? If so, how is this independence guaranteed?

Yes, the public utilities institution is independent of the regulated economic sectors (see answer to question 8). Other institutions mentioned (the Competition Council and the Financial and Capital Market Commission) are also independent of the regulated economic sectors.

This independence is ensured, envisaging complete segregation of these institutions from the regulated economic sector. See also answer to question 8.

10. Do these authorities have a regulatory power? If so, is it a general regulatory power for the sectors concerned or a narrower regulatory power limited to certain specific aspects of regulation?

Powers of **the Public Utilities Commission** are stated by the law. Those powers are comparatively large.

The Public Utilities Commission protects users' interests and promotes development of public service providers; determines methodology of calculation of tariffs; determines tariffs, if particular sectoral laws do not envisage different procedure of determination of tariffs; licence providing of public services; promote competition in regulated sectors and supervise conformity of public services to licence terms, requirements for quality and environment protection established, technical provisions, standards and terms of contracts, and execute another functions, which are established in particular sectoral laws.

Authorities of the **Competition Council** are stipulated in the law. Powers of this institution are also comparatively large. Its tasks include to control, how prohibition of abuse of dominant position and agreements in respect of market participants is observed; to supervise observance of the Advertising Law within framework of its authority; to review reports submitted concerning agreements concluded between market participants and to adopt decisions regarding thereof; to limit market concentration, when deciding on merging of market participants.

Authorities of the **Financial and Capital Market Commission** are also stipulated in the law. Purpose of activity of the **Financial and Capital Market Commission** is to promote protection of interests of investors, depositors and insured persons and development and stability of financial and capital market. To achieve this purpose, the Commission is granted extensive authorities, for example, to pass normative provisions and to adopt decisions concerning demands, which regulate activity of participants of financial and capital market and procedure of calculation of indices and submission of reports characterising this activity, by controlling execution legal provisions and normative provisions and decisions of the Commission; to establish qualification and compliance requirements to participants of financial and capital market and officials thereof; to establish procedure of licensing and registration of participants of financial and capital market, etc.

11. Do these authorities take part in drafting the relevant legislation for regulated sectors, through notice procedures for instance?

One of functions of **the Public Utilities Commission** is to provide information and recommendations on issues concerning regulation of public services upon requests of ministries, which are responsible for sectors regulated. Moreover, institutions, which submit drafts of legal provisions related to regulation of public services to the Cabinet of Ministers, have to submit those also to the Public Utilities Commission for coordination.

The Financial and Capital Market Commission and the Competition Council in accordance with competence of those may draft and, according to procedure established – to submit draft laws to the Ministry of Economics, and it prepares and provides statements concerning draft laws being reviewed in the Cabinet of Ministers, which directly or indirectly touch issues related to purposes of these institutions. Moreover, the Financial and Capital Market Commission may promulgate legal provisions within its authority itself.

12. Do these authorities have a sanctioning power toward companies of the regulated sectors? If so, what kind of sanctions can they adopt and under which procedure? Do these procedures guarantee compliance with provisions of article 6§1 of the CPHRFF?

The Public Utilities Commission is authorised within its competence to adopt decisions and issue administrative acts, which are binding to specific providers and users of public services, independently. In cases stipulated by the law, the Regulator is authorised to annul licence of a public service provider. Administrative act issued by the Regulator or its factual action may be appealed in the administrative court.

The Chair of the Regulator of an official authorised by him/her is entitled to draw up statement on administrative infringement to public service provider, which has been reviewed under procedure established in Latvian Administrative Infringements Code. The Regulator may impose administrative punishment, *inter alia*, for: 1) infringement of the regulatory enactments and regulatory technical documents regarding the technical supervision of electrical equipment, heating supply equipment and gas supply equipment in commercial power supply facilities; 2) infringements of the regulations and norms for the utilisation of gas and electricity; 3) failure to conclude an agreement for electronic communication services and failure to include information specified by the regulatory enactments in the electronic communication service agreement; 4) provision of regulated public services without a licence or general authorisation or in respect of infringement of the conditions of the social service licence or general authorisation; 5) failure to provide information, provision of false information to the Public Utilities Commission and failure to comply with its lawful decisions and infringement of legal provisions of regulated sectors, etc. Applicable punishments may include issue of warning and fine, which, depending on concrete infringement, may vary between 40 EUR and 14 000 EUR.

Decision, by which administrative punishment is imposed to public service provider, may be appealed in a court of general jurisdiction.

Other institutions similarly are authorised to apply sanctions against companies operating in regulated sectors.

Observing abovementioned information, there is reason to conclude that national regulation complies with stipulation of the Article 6 Paragraph One of the Convention for Protection of Human Rights and Fundamental Freedoms.

13. Is every economic sector regulated by a specific authority, or are there some authorities exercising their powers in several sectors?

In Latvia, public services in regulated sectors (energy, electronic communications, postal services, railway transport, household waste management, water management) are regulated by the Public Utilities Commission. However, the

Competition Council also implements its competence in issues, which are established in the law (abuse of dominant position of market participants, dominant position in retail trade, prohibited agreements, merging (concentration), observance of the Advertising Law), the National Electronic Mass Media Council, the Health Inspectorate (pharmacy sector), etc.

14. How are economic sectoral regulatory authorities' competences articulated with those, when appropriate, of a transverse authority in charge of assessing compliance to competition law?

In Latvia, the Competition Council controls, how prohibition of abuse of dominant position and agreements in respect of market participants is observed; reviews reports submitted concerning agreements concluded between market participants and adopts decisions regarding thereof; limits market concentration by adopting decisions on merging of market participants. The Competition Council is entitled to perform market monitoring and investigate infringements of competition law, to provide statements on compliance of activity of market participants with legal provisions, which regulate competition, to submit applications, petitions and complaints to the court, to publish opinion and recommendations.

Opposite to the Competition Council, other institutions, which regulate economic sectors, promote competition, performing planning and organisational functions. The law does not grant authority to those to investigate infringements of competition law and address courts in that respect.

### **III Judicial review of economic sectoral regulatory authorities' decisions**

15. Are all economic sectoral regulatory authorities' decisions subject to judicial review? If not, which decisions are not subject to such checks and why?

Decisions, which are adopted by the Public Utilities Commission and which are directed to individual legal subject, may be appealed in a court (the administrative court or the court of general jurisdiction). Decisions adopted by the Competition Council may also be appealed in the administrative court.

In Latvia, only the Parliament (the Saeima) of the Republic of Latvia and the Cabinet of Ministers are entitled to adopt binding legal acts. Cases concerning incompliance of such legal provisions with superior legal acts are reviewed by the Constitutional Court.

16. Which system of jurisdiction is competent to verify these decisions? When relevant, is the same system of jurisdiction competent to control the decisions of the authority in charge of assessing compliance to competition law?

Rule of law of the Public Utilities Commission (those adopted in respect of merchants) has been evaluated in the administrative court. Competence of this court also includes verification of rule of law of decisions adopted in competition sector.

In addition, it is necessary to indicate that in case, if the Public Utilities Commission as out-of-court instance reviews disputes between the public service

provider and the user or between public service providers in respect of rights and responsibilities of those, then such decision of the Public Utilities Commission shall not be appealed in the administrative court. If a party involved in dispute is not satisfied with the decision of the Regulator regarding outcome of dispute, it has right to submit claim on subject of dispute to the court of general jurisdiction or to the court of arbitration in accordance with procedure established in the Civil Procedure Law, where the court of general jurisdiction or the court of arbitration will review such dispute on the merits.

Administrative acts and action of other supervisory institutions may also be contested in the administrative court.

In cases, when supervising institutions have determined sanctions for administrative infringements, subordination of cases to courts of general jurisdiction is determined to appeal against these sanctions.

17. Which kind of legal recourse is open against these decisions? What are the relevant legal proceedings in this matter?

(See answer to question 18).

18. Which control does the judge exercise on these decisions? Does he monitor the formal requirements, legal proceedings and/or reasons for these decisions? For which kind of decisions does he have limited control? In contrast, for which kind of decisions does he exercise thorough control?

Within administrative procedure in the court, the court performs control over rule of law of an administrative act issued by an institution of factual action of the institution or usefulness considerations at its discretion. Function of administrative courts is to control rule of law of activity of institution, not to decide on usefulness instead of the institution. In case, if decision-maker has discretion, it has to decide on correct solution itself and also substantiate its choice.

Administrative courts review cases, observing principle of impartial examination.

19. While exercising his power of judicial review, how does the judge keep himself informed (appointment of experts, specialised and contradictory investigation, resort to universities, international sources consultation, etc.)?

The Administrative Procedure Law envisages that court proceedings are carried out observing principle of objective investigation, where the court plays active role in collecting of evidences and adjudication of a case. The court is not bound by evidences of parties only, but it has right to establish circumstances of the case itself.

When obtaining information, the institution can use all legal methods, including acquisition of information from participants of administrative proceedings, other institutions, and using evidences obtained from witnesses, experts, inspection, documents and other evidences. If the institution needs information, which is not at disposal of participants of administrative proceedings, but of another institution, the institution acquires this information itself, not requesting it from participants of administrative proceedings.

In case, if specific knowledge is needed in the case, the court may determine expertise in the case. The court may ask an institution (inter alia, higher educational institutions, international institutions) to participate in the case so that it would give statement in the case, within its competence, which would be segregated from expert's statement.

20. Which role does the administrative Supreme Court take toward these decisions? What are the major decisions of supreme administrative justice in economic sectoral regulation matters?

In abovementioned cases, the Department of Administrative Cases of the Supreme Court is the court of cassation instance, where it has been verified, if the court of lower instance has not breached norms of substantive or procedural law or exceeded limits of its competence.

On September 20, 2013, the Supreme Court reviewed case No 24/2013 (on application of Section 13, Paragraph One (abuse of dominant position) of the Competition Law), providing conclusions, which are indicated below:

1) Section 13, Paragraph One, of the Competition Law as examples points out particular ways of abuse of dominant position. Thus, list of actions of abuse of dominant position is not complete and listing of actions included in that does not comprise all manners of abuse of dominant position prohibited by the law.

2) To apply Section 13, Paragraph One, Item 5 of the Competition Law, following should be established:

- 1) If market participant holds dominant position in the market;
- 2) If market participant, who holds dominant position, performed equivalent (of equal value) transactions with other market participants (trade partners);
- 3) If market participant, who holds dominant position, has applied different terms to equivalent transactions;
- 4) If application of different terms may place trade partners in more unfavourable position in term of competition;
- 5) If application of different terms is objectively justified.

3) Activity of the company, which holds dominant position, may not hinder competition in market neither upwards nor downwards, namely, competition among suppliers or among customers of this company. Partners of the abovementioned company may not create more favourable or unfavourable conditions within mutual competition of those. So that terms of application of provision would be observed, it is important to determine not only the fact that action implemented in market by the company, which holds dominant position, is discriminating, but also the fact that it trends to hinder these competition relations, namely, to worsen competitive position of one of trade partners of this company, in comparison with others.

4) It is possible to segregate two cases of discrimination of prices, which may be expressed as use of excluding dominant position in the same market or associated market or as use of exploiting dominant position.

5) In case of excluding discrimination of prices, it is characteristic that market participant, which holds dominant position, practises price policy, which is directed at exclusion of its remaining competitors. However, in case of exploiting discrimination of prices, market participant, which holds dominant position, sets prices, which simply exploit its trade partners.

On January 31, 2013, the Supreme Court reviewed case No 127/2013 concerning dispute between individuals and the Public Utilities Commission regarding administrative act on approval of electricity trade differentiated tariff for associated users, providing following conclusions:

1) If tariffs are established by public trader, its decision regarding determination of tariffs is not an administrative law, but, in accordance with legal regulation, it is subjected to control of the Public Utilities Commission. In its turn, according to Section 11, Paragraph Four of the law “On Regulators of Public Utilities” both the administrative act, which is issued by the Public Utilities Commission in accordance with this law, or its factual action may be appealed in the Administrative regional court.

2) Methodology of calculation of electricity tariffs for associated users (approved by decision No 592 of the Public Utilities Commission of 12 December 2007) (Methodology) stipulates 21-day term, when the Public Utilities Commission has to assess and decide on compliance of differentiated tariffs submitted with the Methodology and economic substantiation. In case, if the Public Utilities Commission adopts decision, which is unfavourable to public trader, namely, on incompliance of tariffs submitted with demands stated in the Methodology, announcement of this decision is to be published in the newspaper “Latvijas Vēstnesis” (Official Gazette of the Republic of Latvia), withdrawing becoming of tariffs effective. In its turn, in relation to positive result of assessment of tariffs, i.e., if tariffs comply with Methodology and economically justified costs, issue of an administrative act is substituted with certain conditions – expiration of term of 21 days after submission of applications and not issuing unfavourable decision within this term. In this case, it has been considered that the administrative act is issued silently (concludent actions). Thus, activity of the Public Utilities Commission – assessment of compliance of tariffs submitted – is prerequisite so that tariffs would become effective, and in result of such activity the Public Utilities Commission issues administrative act.

3) Execution of decision on compliance of tariffs is expressed as public trader’s right to receive payment from associated users for electricity consumed, in accordance with electricity trade differentiated tariffs for associated users. Thus, restoration of previous position is impossible both legally and factually, as public trader is not a respondent in the case, but holds status of third party. However, in case application is satisfied, the applicants may claim for reimbursement from the respondent, after the case is reviewed.

4) Concerning general administrative act, the same procedural rules are mainly applicable as to ordinary administrative act, namely, it may be contested and appealed. However, provisions regarding appeal usually are referable only in respect of concrete applicants, but not of other persons, who had not used their rights actively by submitting an application to the court, although those are invaded by the administrative act appealed. Thus, the court judgement on repeal of general administrative act usually concerns only legal relations between the concrete applicant and an institution. In case of general administrative act, the court is not authorised to repeal an administrative act appealed also in respect of persons, who are not parties to concrete proceedings.

5) Associated users are entitled to question lawfulness of electricity trade differentiated tariff, according to which they perform payment. Rights or legal interests of household users may not be invaded by differentiated tariffs of electricity trade for associated users, which are determined to other associated users, and vice versa. So, subjective rights of applicants to appeal against decision on compliance of

tariffs results from status of an associated user and invasion of rights or legal interests, which may be caused by the concrete differentiated tariff of electricity trade for associated users, according to which each applicant performs payment.

On February 10, 2012, the Supreme Court reviewed case No SKA-43/2012 concerning dispute on origination and consolidation of dominant position. The Supreme Court provided following conclusions:

1) Dominant position originates, if market participants involved in merging obtain dominant position, which had not existed before, in concrete market. On the other hand, dominant position consolidates, if existing dominant position of market participant has been ensured or improved even more. Usually, dominant position of market participant has been improved, if its market share increases. In its turn, dominant position of market participant has been ensured better, for example, if merging causes increase of market barrier, and in case scope of means against unwanted competition, used by market participant holding dominant position, has been extended;

2) Consolidation or improvement of dominant position is to be in causal link with merging of market participants. It must be based on prognosis. However, the responsibility of the Competition Council is to prognosticate not only influence of merging assessed to origination or consolidation of dominant position, but also acquisitions of competitive situation, which result from merging of market participants. Burden of proof of acquisition falls to market participants.