

COMPETENCE OF THE COMPETITION COUNCIL OF THE REPUBLIC OF LATVIA

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Abstract. The author formulates the argued proposals using the historically comparative and dogmatically comparative as well as the systemic research methods in this report, which can be used in the process of the improvement of legal acts (laws, regulations), defining the competence of administrative institutions (authorities), especially defining the competence of The Competition Council of the Republic of Latvia.

Alongside the traditional assumption that the competence is the status of the institution and its rights and duties, it is offered to get acquainted with another approach in which reflecting the activity of the institution, we can see all competence elements in total. The author uses the comparison of the points of view of different scientists of administrative law, in order to provoke discussion about the essence and content of the competence.

In the given report there is offered only an insight how the competence of this important administrative institution is defined much closer to the theoretical basis in the regulations in force. The author considers that in prepared legal acts all offered competence elements should be used. Irrespective of the place of administrative institution in the hierarchy of public administration, the constant competence should be defined for each institution, which could be supplemented with separate elements, but not changing the aim of the activity and not declining responsibility.

It is very essential to define the **aim** of activity in material administrative law coordinating with the administrative procedural principles and law. As the next element of competence, subordinated to the aim, is defining **tasks**. Resulting from them there should be envisaged the **administrative functions** (functions realised by The Competition Council of the Republic of Latvia as executive institution) in the legal statements of competence. There should be regulated authority and **discretionary power** for the successful activity of this administrative institution.

Taking into account the place of the institution in the public administrative system, there should be defined exactly the rights and duties of The Competition Council of the Republic of Latvia in the legal statement about the competence. There is particular significance in general to the determination of **responsibility** (accountability), but it should be defined as a legal, but not political liability about the conduct of the institution.

In the given paper there is offered the possible definition of the competence of the administrative institution, which could be used in scientific research, as well as to work out new legal statements.

Keywords: administrative functions, discretionary power, responsibility, competence.

1. HISTORICAL BACKGROUND OF THE COMPETITION COUNCIL OF THE REPUBLIC OF LATVIA.

The strategic aim of the competition policy is to create conditions for free and fair competition in Latvia, by ensuring such legal and economic conditions that

would guarantee not only attracting foreign investments and business activities in all economic sectors, but also the ability of Latvia to integrate efficiently into European Union. Mentioned here aim is not the same as aim of legal act or aim that is one of the elements of the competence. This aim is declared as a ideal in economic relationship, as a ideal in development of the economy and business.

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The main (the author is against such determination *the main or secondary*) of the Competition Council is to ensure possibility to every market participant to perform his economic activities in free and fair competition environment as well to promote competition development in all sectors of national economy for the benefit of all society.

The Competition Council of the Republic of Latvia was founded on January 1998 on the basis of the Latvian Anti-monopoly Supervision Committee. Competition Council performs its activities as a public (state) body, under supervision of the Ministry of Economics. Independence of Competition Council in its investigation activities and decision-making procedure is provided by the Competition Law.

Tasks of Competition Council are directed towards realization its duties in field of competition protection and development: to analyze received applications, to establish possible violations of law provided by market participants and to achieve their termination as well as to eliminate initiation of rules restricting competition in existing and drafted regulatory enactments. Competition Council is financed by the state budgetary allocations.

During the last few years economic environment as well as desires, competences and possibilities of entrepreneurs in increasing competition has been substantially changed in Latvia. The experience accumulated in the Competition Council and established practices of case review has made a good basement to ensure safeguarding of competition rights of Latvian entrepreneurs in their developed global activities, where they are more and more involved in market integration processes.

The Competition Council has defined its priority for the next following years - detection of prohibited agreements – violation, which makes the worst damages for society. It is necessary to introduce and to apply more effective investigation instruments and motivating sanctions policy. At the same time competition legislation enforcement and development activities are performed, to promote opening of market in sectors with possibility of gaining monopoly profit. These activities are related with legislation analysis and prevention of possible risks for competition restrictions in legislation.

By accession of Latvia into the European Union in year 2004 and enforcement of direct legal effect of the European Community competition legislation, responsibility of the Competition Council includes also effective supervision of the Community internal market rules and joining into the co-operation and information network of the EU competition supervision authorities.

In October 2004 Regulation “Statute of the Competition Council” was adopted by the Cabinet of Ministers. This document establishes legal status, structure and functions of this authority.

2. THEORETICAL POINT OF VIEW ON MATTERS OF THE COMPETENCE.

The famous scientist of Administrative law K. Dišlers in his book „Introduction to Administrative law”

wrote that competence is *officer's right to his official position*. That means officer's official status [1, p. 275]. K. Dišlers explains competence for officer's consisting from rights and duties. He said for official those are not only rights to do, but at the same time obligations to do as official duties. Feather, mentioned author wrote about self-government's competence which consists from three stuff categories: local business, administrative and cultural.

By our point view there can not be competence for official, there can not be stuff categories, but there must be competence for subject of administrative law. There must be competence for public authority as such. But official's have only discretion power to operate on behalf of public authority and for public benefit. What does it mean – competence in modern, democratic society? What is the competence in public administration?

If we start with Latin-Latvian dictionary, we can see **competence** as discretion for authority or official [2]. Other dictionary offers **competent** – such that has legal opportunities, also discretion. There is another explanation – **competence is a part of administrative responsibility**. We are acquainted with point of view A. Stucka, who writes, that **competence for authority is its legal status and competence** [3, 210]. But, we are familiar with State Chancellery's methodic aid (almost recommendation) issued November 21. 2003. Nr. 511-1/527 (not published). This „methods handbook” offers for enforcement State Administration Structure Law to use terms:

1. aid for authority is position in future what government wants to achieve;
2. administrative function is operation in favour to get the aim;
3. task is operation within of function;
4. competence means rights and duties for authority.

It is visible, that some elements of competence, have been offered by scientists.

3. LEGAL AND SCIENTIFIC ASPECTS OF THE COMPETITION COUNCIL COMPETENCE.

In accordance with Competition Law Competition Council has Legal Status.

The Competition Council is a direct administrative institution, which shall act in accordance with this Law and other regulatory enactments. The Cabinet shall establish the Competition Council and it shall be subordinate of the Ministry of Economics, which shall be realized in the form of supervision.

The Competition Law determines the liability of the Competition Council. Tasks carried by the Competition Council are directed towards protection and development of the competition.

Section 6. of the Competition Law regulates **duties** of the Competition Council. It is laid down that the Competition Council shall:

1. monitor the observance of the prohibitions against the abuse of dominant position, unfair

competition and prohibited agreements by market participants, which prohibitions are prescribed in Competition Law, other regulatory enactments and international agreements;

2. supervise the observance of the Advertising Law;
3. examine submitted notifications regarding market participant agreements and decisions taken in respect of them;
4. restrict market concentration by taking decisions in relation to mergers of market participant; and
5. co-operate, within the scope of its competence, with relevant foreign institutions.

The Competition Council, as an *institution subordinate to the Ministry of Economics*, shall:

1. within the scope of its competence, formulate and in accordance with specified procedures submit to the Ministry of Economics draft legislation;
2. prepare and submit opinions regarding draft regulatory enactments to be examined by the Cabinet which opinions directly or indirectly affect issues on the protection, maintenance or development of competition; and
3. in the case of privatization, reorganization and demonopolization of State or local government undertakings (companies), submit if necessary, to the institution concerned written proposals or opinions regarding observance of the principles for the protection, maintenance or development of competition.

And feather in Section 7. of the Competition Law are settled **rights** of the Competition Council as follows:

The Competition Council is entitled to:

- perform market assessments, with the involvement of independent experts if necessary;
- provide opinions regarding conformity of the activities of market participants with regulatory enactments that regulate competition and the Advertising Law;
- submit claim applications and complaints to a court in the cases provided for in the Competition Law and other regulatory enactments;
- publish the views and recommendations of the Competition Council;
- apply European Union competition law; and
- perform the duties imposed upon a Member State competition protection institution by Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) and to utilize the rights provided for in the Regulation.

The Competition Council is entitled to evaluate draft legislation prepared by other institutions and other documents and to provide opinions in respect of them, if such draft legislation includes norms which influence the market mechanism, the realization of which may directly or indirectly restrict competition.

It is obvious incompliance with law what is definite in Competition Council home page. There we can see the **main aim** of the Competition Council is to ensure possibility to every market participant to perform his economic activities in free and fair competition environment as well as to promote competition development in all sectors of national economy for the benefit of all society. The aim as an element of the competence is not in Competition Law. But not without reason marked by G. Starling that every administrative institution performs in accordance to aim [4, p. 317]. We should like to add that first of all elements of competence there must formulate aim. Aim is matter for what the administrative authority is established and function. Aim is that what ought to be reached in the future. That is ideal which ought to be reached as the result of administrative authority's functioning.

Home page offers tasks as follows:

- to supervise, how prohibition of abuse of dominant position, unfair competition and prohibited agreements, provided by the Competition Law, other regulatory enactments and international agreements, has been followed
- to supervise, how the Advertising Law has been followed
- to review notifications submitted on agreements of market participants and adopt decisions regarding these agreements
- to restrict market concentration, to adopt decisions regarding mergers of market participants
- to co-operate with corresponding institutions abroad.

By our point of view in Competition Law ought to be said that **tasks** are and they are formulated in accordance to aim. Tasks must be oriented to reach aim what is formulated for Competition Council and finally to reach the result what for this administrative authority was established. The tasks are operations to reach the results.

Further, there ought to be amendments of Competition Law to set **state executive functions**. These are everyday actions to fulfill tasks. They are consequential to state functions formulated in laws. To operate in-board of one task there can be formulated some functions. Rights and duties are set in Competition Law. But we offer to add that rights must be formulated for Competition Council as the subject of administrative law, but not rights for official. And, it is doubtless that rights for the administrative authority are not the sum of officers rights.

Discretion power is very important element of competence. This is authorization to administer. Authorization to administer can be from higher authority [5, p. 276] as well from legislator. We understand discretion power as a border to administer. This is not freedom to do or not to do. That is duty to do. Not less important the next element of competence – liability. **Liability** of administrative authority as a subject of administrative law and administrative procedure law. This is public accountability.

CONCLUSIONS

1. Nevertheless, Competition Law formulates that Competition Council takes decisions, there is no correctly prescribed that this is discretion power.

2. Competition Law does not formulate Competition Council liability.

3. There must be further scientific discussions about competence, its elements.

4. In future there can be discussion about the role and place of the Competition Council in Public administration as an independent administrative authority which is established by parliament and subordinate the legislator.

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LATVIJOS RESPUBLIKOS KONKURENCIJOS TARYBOS KOMPETENCIJA

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S a n t r a u k a

Šio straipsnio autorius pateikia pagrįstus siūlymus, kurie gali būti panaudoti teisės aktų tobulinimo procese. Straipsnyje apibūrinama viešojo administravimo subjektų kompetencija, atkreipiamas dėmesys į Latvijos Respublikos konkurencijos tarybos funkcijas. Autorius taiko lyginamąjį istorinį ir sisteminių tyrimo metodus.

Žinant tradicinį manymą, jog institucijos kompetencija – tai institucijos statusas, šiame straipsnyje siūloma susipažinti su kitu požiūriu, kai institucijos veikla atskleidžiama kaip kompetencijos elementų visuma. Mokslininkas lygina įvairių administracinės teisės specialistų požiūrius, kad skaitančiajam kiltų noras diskutuoti.

Autoriaus nuomone, visa teisės aktuose numatyta kompetencija privaloma naudotis. Neatsižvelgiant į institucijos vietą viešojo administravimo institucijų sistemos hierarchijoje, kompetencija, kuri gali būti papildyta atskirais elementais, privalo būti nustatyta kiekvienam subjektui, tačiau nepakeičiant institucijos misijos bei nesumažinant jos atsakomybės.

Labai svarbu apibrėžti veiklos **tikslą** materialinėje administracinėje teisėje, derinant ją su administracinio proceso teise bei principais. Kitas kompetencijos elementas, einantis po tikslo nustatymo, yra **uždavinių** apibrėžimas. Tai reiškia, kad reglamentuose turi būti numatytos ir **administracinės funkcijos** (funkcijos, kurias įgyvendina Latvijos Respublikos konku-

rencijos taryba kaip vykdomoji institucija). Čia taip pat privalo būti numatyta ir **diskrecijos teisė**, kaip galimybė veiksmingiau įgyvendinti šios administracinės institucijos funkcijas.

Turint galvoje šios vykdomosios institucijos vietą viešojo administravimo institucijų sistemoje, teisės aktuose turėtų būti tiksliai numatytos ir Latvijos Respublikos konkurencijos tarybos teisės bei pareigos. Nereikia pamiršti ir aiškaus **atsakomybės** (atskaitomybės) ribų nustatymo, tačiau tai turi būti teisinė, o ne politinė prievolė.

Šiame straipsnyje pateikiami galimi viešojo administravimo subjektų kompetencijos apibrėžimai. Jie gali būti panaudoti moksliniuose tyrimuose, taip pat leidžiant naujus teisės aktus.

Pagrindinės sąvokos: administracinės funkcijos, diskrecijos teisė, atsakomybė, kompetencija.

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