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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LATVIA

-- 2012 --

This report is submitted by Latvia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 19-20 June 2013.

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Speech by the chairwoman of the Competition Council

In mid-2012, after being away for less than a year, I have returned to the Competition Council – now as the head of the institution, with same experience of a member of the Competition Council and senior economist, though. First, this position is a new challenge to me; a challenge to change everything that I have found to have an effect on efficient work several years ago when I switched from private sector to work at the specific public administration institution. I am glad to see that public administration in Latvia is changing and the limited resources force us to eliminate excessive bureaucracy and reproduction of inefficient processes. And it is no wonder that the issue of assessment and making the institution as efficient as possible is gaining more importance in public administration.

In 2012, the Competition Council has audited own performance by itself and through public opinion survey. We have assessed our current position in institutional, functional, personnel and budget development and identified the measures to be taken to continue growing the only Latvian competition supervisory authority into an advanced public administration institution with all necessary conditions for fast and productive dealing with issues of public importance arising out of the fundamental values of competition policy.

Professional, enthusiastic employees willing to offer equal opportunities to market participants for the growth of competition in the interest of the society according to the basic principles of competition policy is the greatest asset of the Competition Council. The number of cases to be investigated and the complexity of issues of industry policies increased every year. So far the Competition Council has proved the high competence, neutrality and objectivity and will further base its activities on this value. Therefore, building capacity of the institution, improvement of legal framework of competition and development of motivating personnel policy is and will be the basis for the institution to implement its priorities as efficient as possible. That is - *treat the most serious violations of the competitions, i.e. cartel agreements and abuse of dominant position that destabilize the market with the utmost severity*; to develop targeted measures to promote competition on a regular basis to prevent occurrence of such violations in the first place.

I am confident that despite the limited resources, the institution will tackle these tasks successfully because we are no beginners! Year 2012 has been historically important for the 20th anniversary since competition law is being protected in Latvia. The precursor of the current Competition Council, the Monopoly Supervisory Committee was established on November 12, 1992, and thus gradually a strong legal framework and professional, reliable supervisor of these rights have been developed over 20 years. Therefore, the experience of the Competition Council will further allow to protect successfully the right of businesses to operate in equal competition environment and the opportunities of consumers to benefit from fair competition among such businesses.

Ms. Skaidrīte Ābrama
Chairwoman of the Competition Council

1. Basic information

1. The Competition Council is a direct administrative institution under the supervision of the Ministry of Economics and implements State policy on the matters of development and protection of competition. Independence of the Competition Council in investigations and decision-making is specified by the Competition Law.

2. The main aim of the Competition Council is to give every market participant a possibility to perform economic activities in free and fair competition environment, as well as to ensure favourable environment for maintenance, protection and development of competition for the benefit of entire society.

3. Tasks and rights of the Competition Council are defined in the Competition Law, the Advertising Law, the 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”, the Cabinet Regulation No 795 of 29 September 2008 “By-law of the Competition Council” and other regulatory enactments.

4. Within its activities the authority implements the sub-programme “Implementation of Competition Policy” (26.02.00) of the budget programme “Ensuring Fair Competition, Protection of Internal Market and Consumer Rights” (26.00.00).

5. Tasks of the Competition Council:

1. To ensure a coherent application of the competition legislation so that:

- The market participants would not enter into prohibited;
- There would be no changes in the relevant market that may have a negative impact on consumers and other market participants in case of a merger of market participants;
- The market participants would not abuse their dominant position, thus negatively influencing other market participants and consumers;
- The market participants would not disseminate misleading advertising that essentially affects overall competition;

2. To promote competition in markets with no or limited competition within the competence of the Competition Council;

3. To ensure that legislation developed by other state institutions ensures protection, maintenance and development of competition;

4. To ensure that society has access to comprehensive information about the positive effects of competition on functioning of market and social welfare;

5. To ensure that Latvia’s interests are fully represented in the relevant institutions of the European Union and international organisations.

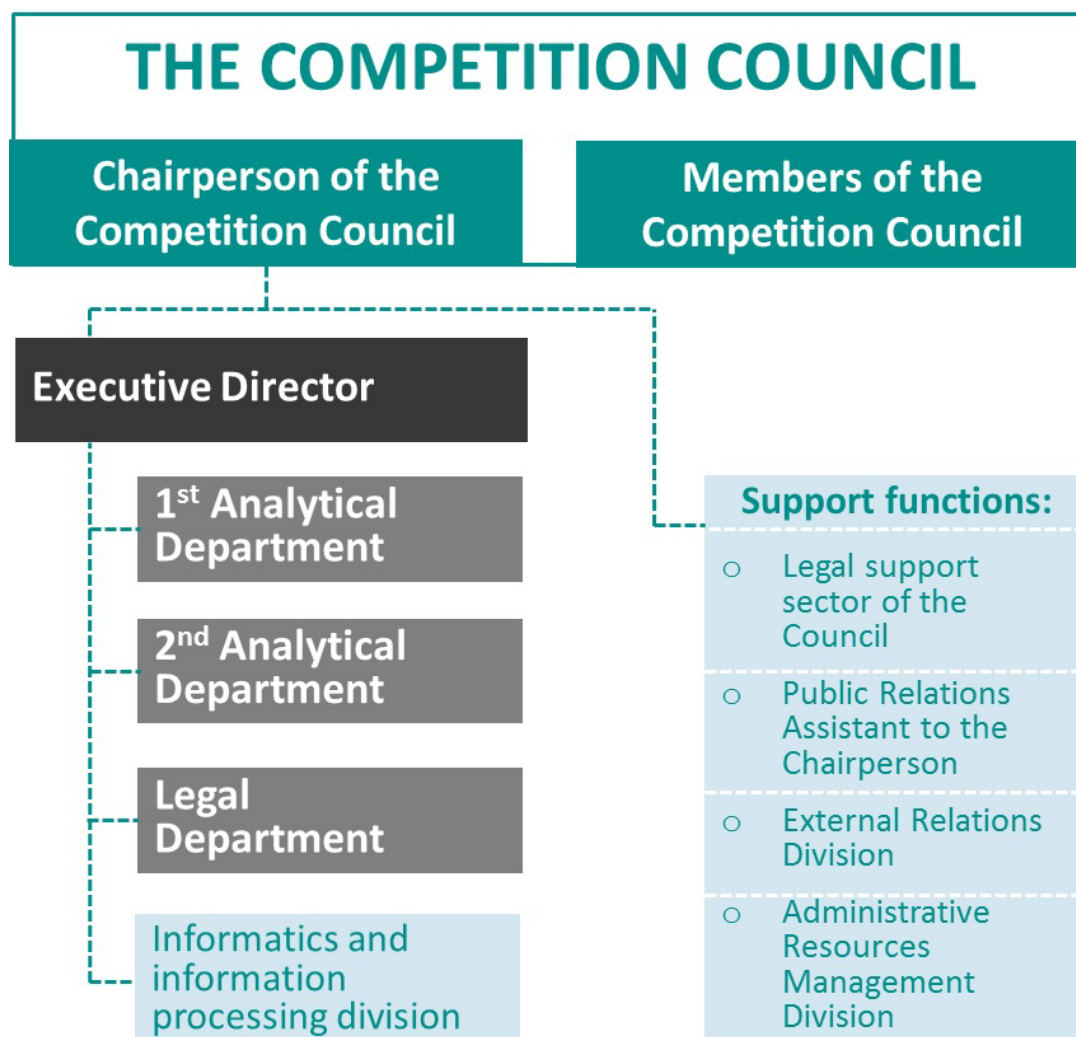
6. Directions of action of the Competition Council are protection of competition, promotion of competition, as well as strengthening the institution’s role in developing and enforcing the EU legislation and in international organisations and cooperation networks.

7. Within these directions of action, the Competition Council had set certain priorities for 2012 – to detect and prevent the most severe violations of the Competition Law (cartel agreements and abuse of dominant position), to carry out wide market surveillance activities with an aim to prevent competition distortion in particularly important consumer markets according to its competences. It was planned to work hard on improvement of regulatory framework by drafting proposals for amendments to the Competition Law and Civil Procedure Law. The Competition Council also planned to carry out public information activities.

1.1. *Structure of the Competition Council*

8. According to the By-law of the Competition Council which defines the structure, division of competencies, management and work organization, the Competition Council consists of a collegial decision-making authority, permanent structural units and an executive institution (see Figure 1).

Figure 1. Organizational chart of the Competition Council



9. **The Decision-Making Authority – the Competition Council** – consists of its Chairperson and two Council Members. The Competition Council is chaired by the Chairperson. The Chairperson and Council Members are confirmed in their office by the Cabinet of Ministers upon the recommendation of the Minister for Economics. The term of office of the Chairperson and Council Members is five years and

these officials may be re-appointed to office. The Chairperson and Council Members may be re-appointed to the office. The Chairperson of the Competition Council manages activities of subordinated structural units of the council – Administrative Resources Management Division, External Relations Division and Legal Support Division, as well as the public relations assistant to the Chairperson.

10. The Executive institution – the Executive Directorate – is managed by the Executive Director who is directly subordinated to the Chairperson of the Competition Council. Structural units of the Executive Directorate – two analytical departments and Legal Department consider applications and investigate violations of the Competition Law, prepare conclusions and draft decisions, perform supervision of competition environment, ensure control regarding execution of legal obligations of decisions and represent the Competition Council in courts.

11. In 2012, a new structural unit – **Informatics and information processing division** was established within the Executive Directorate. It consists of an informatics specialist, who provides support in obtaining and processing electronic data and evidence, as well as ensures improvement of investigation methods and prepares methodological material. The division also consists of two senior economists providing support to experts in tackling economic issues and consulting members of the board on the economic aspects of application of the competition law.

2. Performance results of the Competition Council in 2012

12. In 2012, the Competition Council has achieved all expected performance results defined for the institution in the budget sub-programme “Implementation of Competition Policy” (see Table 1).

Table 1. Result-based Performance Indicators of the Competition Council

No	Measure/activity result activity	Expected performance result	Achieved performance result
1.	Considered applications and investigated cases, eliminated detected violations (number of cases)	20	23
2.	Assessed the impact of planned mergers of market participants on competitive environment in the market (number of cases)	8	12
3.	Surveyed behaviour and action of market participants in the market segments (number of inquiries)	12	12
4.	Carried out preventive measures of market protection by providing explanation of legislation regulating competition and proposals for improvement of laws and regulations and draft laws	60	63
5.	Organized press conferences, meetings, seminars and training (number of measures)	6	12
6.	Prepared and published opinions and conclusions on topical issues, published annual reports (number)	10	11

13. Thus, according to the expected results, the Competition Council has provided both assigned interinstitutional services and public services: considered notifications on violations of the Competition Law and the Advertising Law, provided consultations on competition law, considered notifications on

notified mergers of market participants, adopted decisions on mergers of market participants, as well as informed the public about protection and supervision of competition.

2.1. *Decisions of the Competition Council*

Table 2. Statistical summary of decisions

Prohibited agreements	17
Detection of violation	6
Non-initiation of a case	3
Termination of investigation	8
Abuse of dominant position	15
Detection of violation	4
Non-initiation of a case	8
Termination of investigation	1
Termination of investigation after receiving a written determination	2
Abuse of dominant position in retail trade	1
Detection of violation	1
Enterprise merger	11
Permitting a merger	8
Permitting a merger on binding conditions	2
Detection of violation (failure to timely notify the merger)	1
Violations of the Advertising Law	0
Violations of the Latvian Code of Administrative Violations	8
Failure to provide information or providing of false information	7
Failure to fulfil the decisions of the Competition Council and lawful requests of officials	1
Total	51¹

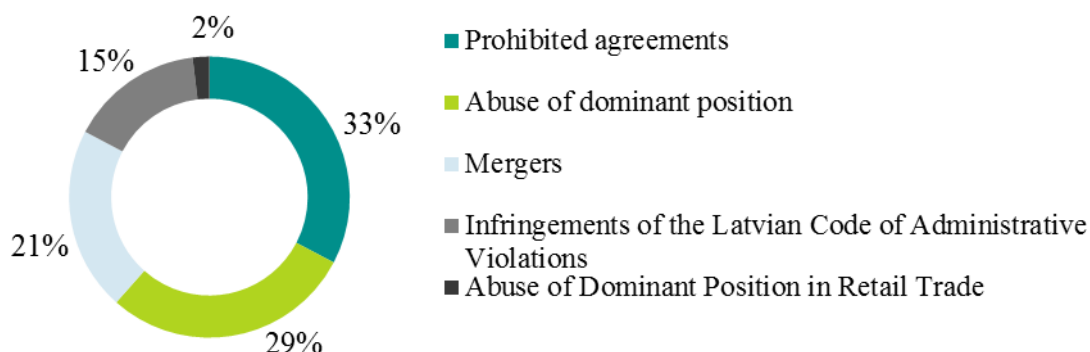
14. In 2012, the Competition Council adopted total 51 decisions. Thus, 12 decisions detected violations of the Competition law, imposing fines in the amount of LVL 253 725.01 on 13 enterprises.

15. The Competition Council has also imposed fines for the infringements of the Code of Administrative Violations in eight cases (in total amount of LVL 6680). The fined enterprises have failed to provide information, provided false information or failed to fulfil the lawful requests of the decisions of the Competition Council and officials.

16. The percentage breakdown of decisions by types of violations is shown in Figure 2.

¹ In one case the decision on non-initiation of a case on prohibited agreement and abuse of dominant positions at the same time was made, and therefore the number of decisions by groups of violations exceeds the total number of decisions

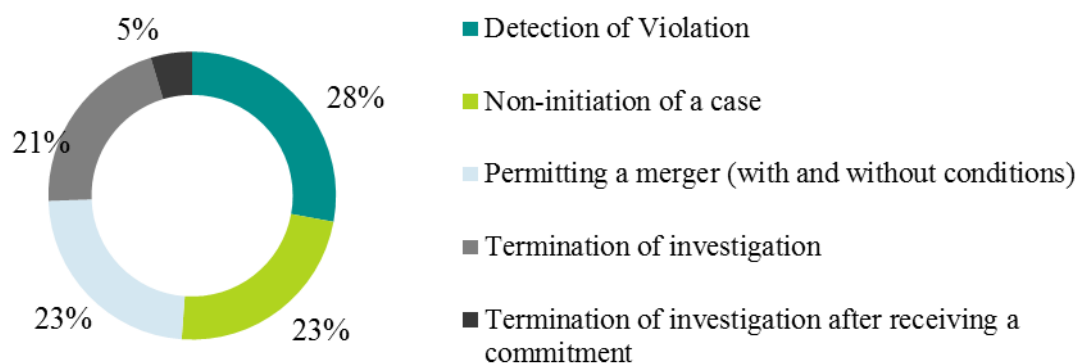
Figure 2. Breakdown of decisions of the Competition Council in 2012 by types of violations



17. As regards detection and prevention of the most severe competition violations – violations of prohibited agreements and abuse of dominant position, a total of 32 decisions were adopted last year and 10 of them detected violations, thus punishing a total of 11 enterprises and imposing fines in the amount of LVL 209 032.26.

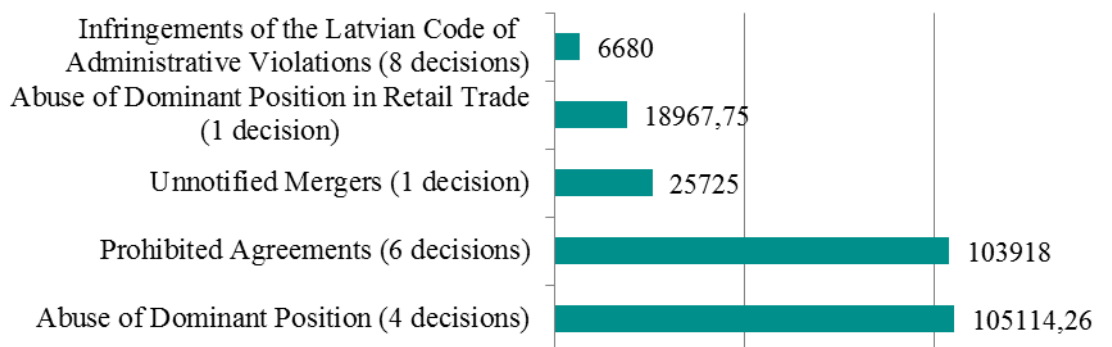
Overall in 2012, decisions on determination of violation were adopted in 12 cases. In 10 cases the Competition Council decided not to initiate a case because the concerns about possible violations expressed in notification of market participants did not confirm. Nine decisions were made on termination investigation in cases where the initial information indicated on possible violation of the Competition Law, however was not proved during the investigation, while 10 decisions were related to mergers control (see Figure 3).

Figure 3. Types of decisions on the Competition Law adopted in 2012



2.1.1 Imposed Fines

18. In 2012, the Competition Council has imposed fines in the amount of LVL 260 405.01 within a total of 20 decisions. The fines have been imposed on 21 enterprises.

Figure 4. Amount of imposed fines (LVL) by types of violations

19. The amount of fines imposed on market participants for violations of the Competition Law within the reporting period ranged between LVL 500 to LVL 50 000. The size of imposed fine depended on length of the violation and consequences caused by unnotified mergers or the turnover of financial year of the involved market participant, severity, length, consequences of violation and other factors in case of prohibited agreements and abuse of dominant position.

20. Within the reporting year, the Competition Council has imposed fined for violations of the Latvian Code of Administrative Violations in eight cases – failure to provide information or providing of false information, as well as non-fulfilment of decisions of the Competition Council and lawful requests of officials.

21. In 2012, **fin**es in the amount of **LVL 896 806.09** imposed by the Competition Council within previous years and in 2012 for violations of the Competition Law and the Latvian Code of Administrative Violations have been **paid into the state budget**.

22. By the end of 2012, fines in the amount of LVL 8 452 704.29 imposed by the Competition Council have not been paid yet – the payment period has not expired yet, a compulsory enforcement of decision on imposing a fine has been initiated and implemented by sworn bailiff, or the decision has been appealed and legal proceedings are in progress. In case the decision of the Competition Council is appealed, the enterprise shall pay the fine imposed by the decision only after closing the legal proceedings unless the court cancels the fine.

2.2. *Legal Proceedings*

23. Final decisions of the Competition Council on violation of the competition law may be appealed to the Administrative District Court within a month from entering into force of the decision. Thus, decision on initiation of a case, on initiation of an additional investigation in merger control cases and extension of the time period for decision-making cannot be appealed.

24. Thus, 16 of all final decisions of the Competition Council adopted in 2012 were appealed.

25. In 2012, **legal proceedings were closed in 13 cases**, by entering into force of decisions made by the Competition Council regarding all cases. In one case legal proceedings were closed after signing an administrative contract, while in 12 cases the court sustained the decision of the Competition Council.

26. Overall, **administrative contracts** were concluded with five market participants. The Competition Council has the right to conclude an administrative contract or settlement to end a legal dispute. That makes it possible to avoid long proceedings that usually are caused by appealing the

decisions of the Competition Council, thus allowing to save state administration resources and forcing payment of the imposed fine. Yet, enterprises that enter into the contracts usually are subject to reduced amount of the imposed fine. Pleading guilty for the particular violation is one of the pre-conditions for the administrative contract set by the Competition Council. The decision of the Competition Council comes into force as soon as the contract is signed.

27. During the reporting year a total of 48 court hearings have taken place to consider the appealed decisions of the Competition Council. At the end of 2012, there were 34 pending cases on the decisions adopted by the Competition Council.

28. Among the most important court rulings is the ruling of the Supreme Court Senate sustaining the decision of the Competition Council of 2009 on punishing AS "Sentor Farm aptiekas" for unnotified merger. The court in its ruling states that implementation of a merger does not include only obtaining of pharmacy licence if there are other evidence of one enterprise acquiring control over another enterprise.

29. Equally important is the ruling of the Regional Administrative court to reject the claim of SIA "Preiss" to annul the decision of the Competition Council adopted in 2011 to fine SIA "Terra Serviss" and SIA "Preiss Agro" for prohibited agreement. By declaring the decision of the Competition Council legal and justified, the court supported the action of the institution, i.e. imposing the fine on insolvent SIA "Preiss Agro" jointly with its subsidiary company SIA "Preiss", because SIA "Preiss" as the owner of SIA "Preiss Agro" had control over decision-making of its subsidiary company. By strengthening the application of the joint and several liability principle, the court strengthened the liability of market participants for violations of the competition law, thus motivating to avoid such violations.

2.3 Investigation of Violations of the Competition Law

2.3.1 Prohibited Agreements

30. Prohibited agreements are particularly severe violation of the competition law that may cause massive and usually irreversible damage to the particular market, consumers and often in long-term also enterprises involved in the violation as they feel no competition pressure and therefore loose competitiveness. Thus, detection and prevention of prohibited agreements is one of the key priorities of the Competition Council.

31. In 2012, the Competition Council adopted 17 decisions on possible violations of prohibited agreements. Six decisions detected violations and fines in the total amount of LVL 103 918 have been imposed on enterprises. Three decisions were adopted on non-initiation of a case as thorough investigation did not confirm the concerns about possible violations expressed in submitted notifications. Also, in eight cases the Council decided to terminate the case because no evidence of possible violation was obtained in investigation, though initial information available to the Competition Council indicated on such violation.

32. Although entrepreneurs have the opportunity to report involvement in a cartel within the leniency programme and to be the first one to receive a full exemption from a fine, this opportunity has not been used yet. Therefore, detection of prohibited agreements to a great extent relies on active work of the Competition Council by analysing processes in the market. So, in five out of six cases, which detected violations, investigation was initiated on the Competition Council's initiative – the institution obtained information on possible violations within market surveillance process. One case was initiated based on information provided by the Procurement Monitoring Bureau.

33. Among the violations detected last year were cases involving undertakings which tried to restrict possibilities for competitors to operate in the market, and market sharing and price fixing unfavourable to

consumers. There was also a case involving applicants of a public procurement who violated the prohibition of agreement.

34. So last year, after detecting the violation in activities of SIA “RIMI Latvia” in 2011, the Council continued evaluating contracts between the shopping centre and its anchor tenants (daily consumer good shops) and detected two similar violations. It was determined that also SIA “MAXIMA Latvija” and SIA “PALINK” had included a prohibition for lessors of selling space to lease space to other undertakings without the permission of particular anchor tenant. The damage caused by such restrictions may give less choice for consumers and hinder the development of small, specialized shops and increase the dependence of producers on retail chains because they have no opportunity to create efficient, sufficiently large and easy accessible alternative distribution channel by establishing their own chain of specialized shops in shopping centres.

35. When investigating activities of non-productive pet food and medicine distributors within the market surveillance, the Competition Council detected two prohibited vertical agreements – wholesalers fixed a minimum resale price for their own production, thus making it impossible for retailers to set lower price, and in some cases wholesalers also implemented market sharing. Such wholesalers’ action hinders competition between traders (pet shops, veterinary clinics and other wholesalers) and restricts opportunities for consumers to buy certain goods at lower price.

36. After receiving information from the Procurement Monitoring Bureau regarding overlapping data in applications submitted by two construction companies for the same procurement, the Competition Council established that these companies have employed a number of employees who have been working in both companies at the same time for a long period, thus disclosing business plans of one company to the other. The same employees have also prepared documentation for the procurement, thus disclosing data containing trade secret to competing company and liquidating competition between the two companies.

37. Last year a fine for restricting competition between members has been imposed on one professional association – the Latvian Locksmiths Brotherhood. It has been prepared a single recommended price list, thus restricting competition between the members of the brotherhood. Even though these prices have not been directly applied, they considerably reduce uncertainties about possible prices of competitors. That might lead to a situation where a service might cost more due to the recommended prices than the particular service provider could offer in free competition environment.

2.3.2 *Abuse of Dominant Position*

38. In every free market, there may develop enterprises in a dominant position. Such enterprises have sufficient market power to operate completely or partially independently of competitors, customers, suppliers or consumers; however, dominant position itself is not a violation – the Competition Law prohibits enterprises from abusing dominant position by preventing competitors from entering or operating in particular market.

39. Prevention of abuse of dominant position is particularly important to small and medium-sized enterprises who cannot win unfair competition due to limited resources. It is essential also to consumers as it helps prevent price fixing that does not comply with the actual market situation.

40. In 2012, the Competition Council adopted 15 decisions on possible abuse of dominant position. Four of them were made on detection of a violation and imposing a fine, one decision – on termination of investigation and eight – on non-initiation of a case. In two cases the Competition Council adopted a decision to terminate investigation after receiving a written determination of an enterprise to eliminate the violation and consequences thereof.

41. The Competition Council has imposed fines in the total amount of LVL 105 114.26 on four commercial companies for abuse of dominant position. Yet, a fine of LVL 18 967.75 has been imposed on one enterprise for abuse of dominant position in retail trade².

42. Three out of all violations detected last year involved dominant enterprises which used their market power to restrict possibilities of other enterprises to operate in the market. So, ship-generated oily waste treatment company at Riga Freeport, SIA "Eko osta" has unreasonably refused to cooperate with SIA "Corvus Company", thus excluding it from the ship-generated oily waste collection market at Riga Freeport. SIA "Forum Cinemas" has abused its market power to get competitive advantage on the film distribution market, while bet Ventspils municipality water supply company SIA "Ūdeka" has restricted the possibilities of other companies to provide installation and sealing services of water consumption meters.

43. SJSC "International Airport "Riga"" violated the law by charging substantially lower prices for airport services to the airline Ryanair than those charged to the airline airBaltic without reasonable justification.

44. Last year the Competition Council for the first time by a decision established that non-food retail trader (AS "Drogas") had abused its dominant position in retail trade³. The regulation of relations between large retail chains and their suppliers was introduced to the Competition Law in 2008, and so far, violations of this regulation have been detected only in activities of food and daily consumer goods chains SIA "Rimi Latvia" and SIA "Maxima Latvija". The described nature of the violation of AS "Drogas" incorporated in the decision allows producers and suppliers encountering excessive pressure of large retailers on a daily basis to compare their experience to that described in the decision and to use it in negotiations with traders or decide on turning to the Competition Council.

2.3.3 *Merger Control*

45. Last year, transactions of 11 enterprises met the criteria laid down by the Competition Law, which means that once the criteria are met, in order to merge they have to obtain a permission of the Competition Council.

46. In eight cases, the Competition Council made a permitting decision, in two cases the merger was permitted on binding conditions that prevent possible damage to the market and competition, by one decision a fine was imposed on market participant for failure to submit the notification of a merger.

47. Within supervision of mergers, the key priority of the Competition Council is protecting public interests by preventing excessive market concentration and maintaining consumer rights to choose. At the same time, the authority endeavours to ensure fast and quality consideration of notifications submitted by market participants.

48. Among the most important transactions evaluated last year are two mergers: the merger of MTG Broadcasting AB and AS "Latvijas Neatkarīgā Televīzija" and the merger of AS "Rīgas piena kombināts" and AS "Valmieras piens". In both cases the Competition Council imposed a range of binding conditions

² A dominant position in retail trade significantly differs from the classical notion of dominant position in terms of market power. An enterprise holding a dominant position in retail trade is able to impose unfair business conditions or payments on suppliers, yet, contrary to the classical notion of dominant position it cannot act completely independently of consumers or competitors. Thus, an enterprise holding a dominant position in retail trade shall bear special liability for relations with suppliers.

³ See reference No. 2.

on the companies with an aim to prevent possible negative impact of the merger on the market and consumers. In case of television merger, the bidding conditions protect the interest of advertisers, distributors of television content and the audience of television, while in case of dairy factories – the interests of farmers, smaller traders and consumers.

2.4 *Sector Inquiries*

49. Sector inquiries are an essential tool to promote and protect competition – based on the information on selected target markets obtained within sector inquiries, the Competition Council analyses competition situation, and develops and submits proposals for improvement of competition to responsible institutions as necessary, as well as checks the supervised market for violations of the Competition Law.

50. Thus, six out of all violations of the Competition Law found in 2012 were detected based on the information obtained within sector inquiries carried out by the institution.

51. In 2012, the Competition Council completed inquiries in twelve⁴ markets:

- **Domestic animal food market inquiry.** Competition environment, pricy dynamics and existing barriers to production and distribution of domestic animal food were surveyed within the market inquiry of wholesale and retail of the most popular productive domestic animals – beef, pigs and poultry food. No violations of the competition law were detected within the inquiry; however the Competition Council concluded that there are strong producers in Latvia, consumers have the possibility to buy also imported products, besides, recently a number of producers of agricultural products (pork, eggs, broiler meat) started to produce animal food themselves. Yet, as a result of non-productive domestic animal food market inquiry, the Competition Council established two prohibited agreements where wholesalers of domestic animal food fixed resale price and market sharing, thus restricting the possibility of consumers to buy specific products in specialized pet shops and veterinary clinics for lower prices.
- **Within the market inquiry of plant protection products** the competition environment was surveyed and the Competition Council obtained information on possible violation of the Competition Law and initiated a violation case to carry out deeper investigation of the information.

⁴ Information on one of the market inquiries completed in 2010 will be published in the report for 2013 because disclosure of detailed information during preparation of this report may harm the interests of investigation. Information about market inquiries that was not published to protect the interest of previous investigations:

- **Rail freight service market inquiry** was completed in 2010. Analysis of the information obtained within the inquiry resulted in initiating a case on possible violation of the competition law in the activities of rail freight service provider SIA “LDZ Cargo” dominating in Latvian market as the company have set tariffs for different types of freight. Although no violations were detected during the investigation, the Competition Council in its decision emphasized the special liability of this company not to prevent and distort competition by its activities.
- **Professional locksmith activity market inquiry** was completed in 2011. The information obtained within the inquiry served as a basis for initiation of three violation cases. One of the cases resulted in a decision to fine the Latvian Locksmiths Brotherhood for restricting mutual competition by preparing a single recommended price list. After in-depth investigation no violations have been detected in the other two cases.

- **Within the market inquiry of household electric appliances repair services** the Competition Council informed market participants about measures to be taken to avoid any kind of restrictions on parallel import and thus avoid reducing potential competition and consumer choice.
- **The market inquiry of copyright administration services** was carried out as post-examination of the decision of the Competition Council adopted in 2008. The inquiry led to initiation of a case against the collective copyright management association AKKA/LAA. As a result of the investigation in 2013, the Competition Council established that the AKKA/LAA has abused its dominant position in the market and imposed excessive tariffs for music airplay in customer and visitor areas, thus violating the prohibition laid down in both the Competition Law and the Treaty on the Functioning of the EU.
- **Within the service market inquiry of unprocessed meteorological information from radar** the Competition Council investigated the action of the Baltic meteorological agencies based on publicly available information and a number of reports submitted by citizens. The agencies denied users with Latvian IP address access to certain meteorological radar and weather forecast maps on Estonian and Lithuanian meteorological agencies websites. Lithuania lifted the restriction during the, while Estonian meteorological agency removed the temporary restriction after intervention of the Competition Council of Latvia, eliminating the negative influence on competitiveness of Latvian enterprises which require the information about weather in neighbouring countries for business purposes.
- The Competition Council carried out **the ready-mixed concrete market inquiry** as post-examination of a case that was first investigated in 2008 on the alleged abuse of a dominant position by SIA “Cemex” on grey concrete wholesale market. At that time, the Competition Council found no violation, though it emphasized the special responsibility of SIA “Cemex” not to distort competition on the market by its activities and advised the company to carefully consider its pricing policy. During the ready-mixed concrete market inquiry in 2012, the Competition Council surveyed changes and current competition on the particular market, as well as checked for unreasonable competition restrictions. No violations of the competition law were detected during the inquiry.
- **Within the real property management market inquiry** the Competition Council advised heat supply providers to ensure equal provisions of contracts to all customers in order to prevent detected threat to equal competition. Thus, those providers have to ensure that any differences between contract provisions are economically reasonable. The Competition Council provided the information obtained within the inquiry to the authorities responsible for regulation of the industry.
- **Passenger traffic market inquiry** was launched with an aim to evaluate competition and impact of the concession of the rights to provide public transport services and division of intercity public transport routes into eight lots on the market defined by the Decree of the Cabinet of Ministers of May 20, 2008. No violations of the competition law were detected during the inquiry. The Competition Council in its conclusions said that public transport service providers were able to compete with each other only by participating in public and local government tenders. Thus, in order to further eliminate competition restrictions and ensure free and growth-oriented competition, it was recommended to sign further contracts for shorter period and avoid significant amendments to the concluded contracts.
- **Within research service market inquiry** the market and sales data compilation practice in Latvia was assessed. No violations of the competition law were detected during the inquiry;

however the Competition Council drew the attention of the investigated undertakings to the existing risks and asked them to further carefully assess conformity of the information to be complied with the restriction on exchange of information defined in the Competition Law.

- The Competition Council carried out **the Dairy product market inquiry** to obtain deeper information about activities and cooperation among dairy processing undertakings and retailers. This information was used to assess also merger transaction of AS “Rīgas piena kombināts” and AS “Valmieras piens”. In order to prevent possible negative impact of this merger on competition, the Competition Council imposed a range of binding conditions on both companies to protect the interests of farmers and smaller traders.
- **Within the inquiry of the sales system of Riga public transport smart cards and smart tickets** the Competition Council evaluates availability of smart tickets and smart cards to retailers and consumers and prepared recommendations for distributors of sales terminals to develop a non-discriminatory system for placements of devices so that they would be available also to small traders and thus also a broader range of consumers.
- The Competition Council carried out **the inquiry of development of digital terrestrial TV** for the purpose of preparing a justified opinion on the planned amendments to the Electronic Mass Media Law and submitting it to the Human Rights and Public Affairs Commission of the Saeima, describing the strengths and weaknesses of both possible ways to provide digital terrestrial broadcasting expected to be launched as of 2014 from the point of view of competition.

52. Thus, in 2012, previously initiated and new market inquiry cases were continued and the Competition Council will continue investigating these cases also in 2013. At the end of 2012, the Competition Council continued inquiries in 12 different markets.

2.5 Improvement of Legal Framework

53. In 2012, the specialists of the Competition Council developed proposals of the institution for amendments to the Competition Law in order to ensure its conformity to the latest implementation trends of the competition law in the European Union. Amongst the important planned amendments are changes in the procedure for application of fines to prevent possibilities to avoid payment of a fine. It is also expected to make the enforcement of legal obligation more efficient and to make the leniency programme more attractive. The leniency programme offers undertakings an opportunity to be the first to report involvement in a cartel and submit evidence of cartel activities and thus receive exemption from the fine. The amendments to the law would also grant the Competition Council the right to prioritize the issues to be considered and not consider less serious cases that, for example, involve only two market participants and have no broad impact on the market without spending resources on issues that causes no serious damage to the market.

54. At the same time the Competition Council worked on amendments to the Civil Procedure Law to simplify the procedure for bringing an action in court concerning violation of the Competition Law and recovery of losses.

55. Personnel of the Competition Council participated in the development of the draft Law on the Prohibition of Unfair Practices of Retailers. This law is expected to further replace or specify regulations of relations between large retail chains and small suppliers currently laid down in the Competition Law.

56. In order to eliminate administrative barriers and promote competition for the benefit of consumers, in 2012, the Competition Council has provided conclusions on **nearly 30 draft laws and**

policy planning documents at the various stages in the decision-making procedures, as well as effective laws and regulations applicable to different sectors like waste management, public procurements, agriculture cooperatives, electronic communication and others.

57. After evaluating draft laws and regulations, the Competition Council aims at eliminating unjustified barriers, requirements for entering the market, unreasonably different regulations as any kind of unjustified restrictions on the particular market have negative impact on competition and in long-term – also on consumers.

58. So, for instance, last year the Competition Council contributed a lot to explain the possible damage to the market and consumers caused by administrative barriers to competition on waste management market. Currently the Waste Management Law allows local governments to not organize tenders if waste management is provided by an enterprise that is partially or fully owned by the local government. That makes it possible to provide different provisions to all service providers, while citizens are deprived of the possibility to benefit from competition between undertakings. For the purpose of respecting interests of the society to receive cheap and quality services, the Competition Council proposed changes in the law and impose an obligation on local governments to organize a tender for waste management even if the local government has own enterprise. The Competition Council also supported the draft regulations of the Ministry of Environmental Protection and Regional Development allowing the largest enterprises to select waste management provider irrespective of the choice of local government.

2.6 *International Cooperation*

59. The objective of international cooperation of the institution is to fully make use of opportunities offered by the participation of the Competition Council in the European Union and world competition authorities' networks, while priorities are - to participate in development of legislation at the European Union level, cooperate with the European Commission and competition protection authorities of other countries in investigations of joint cases and exchange of experience, as well as to build international recognition of the institution.

60. The Competition Council is actively involved in international organisations and networks; among the most important are the European competition network, the International competition network and the Organisation for Economic Co-operation and Development (OECD).

61. The aim of **the European Competition Network (ECN)** is to provide an opportunity to competition authorities of the European Union to discuss on application of Article 101 (prohibited agreements) and Article 102 (abuse of dominant position), as well as to promote cooperation among these authorities.

62. In 2012, the Competition Council continued active participation in the ECN activities. In order to obtain the experience of other member states of the European Union and the European Commission in investigating violations of competition law, cooperate with other competition authorities and participate in discussions on the latest Commission initiatives, members of the Competition Council participated in the ECN plenary sessions and several meetings of its working groups and sub-groups addressing anti-cartel practice and policy development related issues, as well as issues on the experience of the member states in supervision of mergers and obtaining and processing electronic evidence, issues on competition in pharmacy, mass media, professional services, telecommunication and food market, as well as financial and payment service market. A member of the Competition Council also worked as a reporter in the EC Advisory Committee.

63. The Competition Council has also provided information for the ECN Brief that is published every two months. The Brief contains information on the major news about activities of the ECN member state competition authorities – important investigated cases, carried out inquiries and market surveillance, latest laws and other important competition policy related issues.

64. **The International competition network (ICN)** ensures exchange of information and experience among competition authorities around the world, thus facilitating dynamic dialogue that, in its turn, serves to build consensus and convergence towards sound competition policy principles. In the reporting year, the Competition Council provided information on competition law issues in Latvia to the ICN.

65. The mission statement of **the Organisation for Economic Co-operation and Development (OECD)** is to support economic growth, promote employment, increase quality of life, maintain financial stability, support economic growth of other countries, as well as to promote trade. One of the key directions of this organisation is supervision of competition. Year 2012 was the first year since the Competition Council participated as an observer in the OECD Competition Committee meetings. Within the meetings the Competition Council presented experience of Latvia in the work with the lenience programme and conclusions drawn during investigation of the interbank payment case. Yet, at the annual OECD Global Forum the Latvian Competition Council presented a report in the important role of market surveillance in planning of the institution's work and considering possibilities to implement policy tasks in a more efficient and targeted manner.

66. In 2012, members of the Competition Council participated in several annual events of international competition authorities – the annual meeting of heads of competition authorities held by the European Commission Directorate General for Competition, the meeting of heads of European competition authorities, the European Competition day conference, as well as the Competition day conference held by the competition authority of Russian Federation.

67. In 2012, within the cooperation of Baltic competition authorities, the Latvian Competition Council held the **9th annual competition conference of the Baltic States** in Riga. It was dedicated to possible increase in efficiency of implementation of competition policy and particularly – the use of lenience programme. Specialists from Latvian, Lithuanian, Estonian, Finnish, Swedish and German competition authorities shared their experience in the conference, while representatives from industry associations, business and leading lawyers' offices were invited to participate in discussions of the first day to make the latest information on implementation of competition policy available to broader target audience.

68. Every three years each of the three Baltic States is organizing the Regional competition conference of the Baltic States. The conference is aimed at exchange of information and experience and strengthening cooperation among the involved countries thus ensuring more efficient investigation of violations and market surveillance.

2.6.1 Participation in Development and Enforcement of the European Union Laws

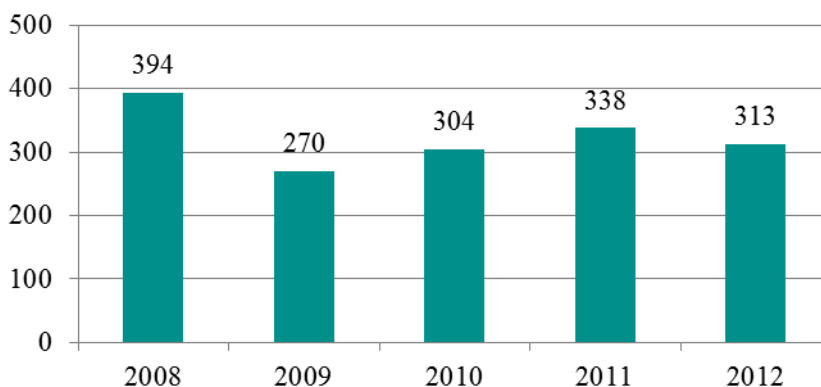
69. Within the reporting year, the Competition Council participated in development of the Latvia's position in relation to competition rules of common organizations on agricultural products after 2013, providing a suggestion for a regulation on recognizing the producer organizations, association and intersectoral organizations laid down in the Proposal for Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets (Single CMO Regulation).

70. In 2012, the Competition Council received information on 313 cases submitted to the EC for consideration regarding the Council Regulation No 139/2004 on the control of concentrations between

undertakings (the EC Merger Regulation). Out of them, cases declaring turnover of participants of a merger in Latvia found no merger that might significantly affect competition in Latvia, therefore, there was no need to ask the Commission to consider a merger case or hand over a part of a case to the Commission for consideration according to the Competition Law.

71. Comparing to the last two years, the number of merger cases considered by the EC has not significantly changed (see Figure 5).

Figure 5. The number of merger cases considered by the EC



72. Overall last year, the most of notifications on fusion, merger of enterprises or establishing a joint venture in Europe was submitted by participants of pharmacy, medical supplies, consumer goods, financial service markets, as well as electricity and gas markets. A number of merger cases last year were also in markets of music publishing, life insurance, chemical industry, and television and information technologies.

73. Last year, in addition to these cases pursuant to the EC Regulation No 773/2004, the institution received information on investigation of three cases of violations of Article 101 and 102 of the Treaty of Functioning of the EU (abuse of dominant position and prohibited agreements) initiated by the EC, thus making it possible to avoid parallel investigations.

2.6.2 Participation in Implementation of Twinning Project at Moldova Competition Authority

74. At the end of 2012, the twinning project of Latvian, Romanian, and Austrian and Moldova competition authorities was closed by an international conference in Chisinau. The Project was aimed at strengthening protection of competition law in Moldova, thus letting the country to take the next step towards the EU-oriented policy. Moldova competition authority and the Representation of the European Commission in Moldova recognized it as one of the most successful EU funded projects in the country.

75. Experts of the competition authorities from the involved countries in close cooperation developed a new competition law that has now entered into force, thus significantly expanding the range of sanctions available to the Moldova Competition Council and also the possibilities to detect violations and ensure equal conditions to all market participants. That makes it possible not only to better protect the interests of Moldova enterprises and consumers but also ensure legal environment for foreign, including Latvian enterprises willing to expand their activities in Moldova.

76. A state aid regulation and the strategy of Moldova Competition Council were also developed during the project.

77. The Competition Council obtained the right to participate in implementation of the project through a tender. Latvia supervised development and improvement of the strategy and internal regulations of Moldova Competition Council within the part “Strengthening Institutional Capacity”. Latvian experts also participated in implementation of the project component “Competition Law” under supervision of Austrian competition authority. The third project component was implemented under supervision of Romanian competition authority and it was dedicated to state aid issues.

3. Management of the Competition Council

3.1 State Budget Financing and Use Thereof

78. In 2012, the Competition Council has used financing in the total amount of LVL 625.44 thousand within the sub-programme “**Implementation of Competition Policy**”. Financing in the amount of LVL 576.097 thousand have been used for implementation of the principal activities of the Competition Council (see Table 3).

79. In this year, the Competition Council participated in implementation of the EU financed twinning project “*Support to Implementation and Enforcement of Competition and State Aid Policy*” in the Republic of Moldova. The financing earmarked for the project implementation (see Table 4) constituted 9.5 % of the financing approved within the budget for the sub-programme “Implementation of Competition Policy”.

80. In 2012, the Competition Council has used 92.73 % of the financing allocated to the institution. The main reasons for not using the full amount of financing were the following: impossible to extend office space for establishment of new workplaces, thus filling in all vacant positions, as well as a number of personnel selection tenders were closed without results.

Table 3. Financing for principal activities of the Competition Council

No	Financial indicators	Previous year (actual results)	Reporting year	
			Approved by law	Actual financial performance
1.	Financial resources to cover expenditures (total)	442 524	576 097	576 097
1.1.	Grants	442 524	576 097	576 097
1.2.	Chargeable services and other own income			
1.3.	Foreign financial assistance			
1.4.	Donations and gifts			
2.	Expenditures (total)	433649	576 097	541 468
2.1.	Maintenance costs (total)	433649	572 757	538 145
2.1.1.	Current expenditure		572 757	538 145
2.1.2.	Interest expenditure			
2.1.3.	Subsidies, grants and social benefits			
2.1.4.	Current contributions to the European Union budget and international cooperation			
2.1.5.	Maintenance cost transfers			
2.2.	Expenditure for capital investments		3 340	3324

Table 4. The EU financing to the Competition Council for implementation of the twinning project in Moldova

No	Financial indicators	Approved by law	Actual financial performance
1.	Financial resources to cover expenditures (total)	60 470	49 340
1.1.	Grants		
1.2.	Chargeable services and other own income	60 470	49 340
1.3.	Foreign financial assistance		
1.4.	Donations and gifts		
2.	Expenditures (total)	73 113	60 535
2.1.	Maintenance costs (total)	70 113	57 539
2.1.1.	Current expenditure	70 113	57 539
2.1.2.	Interest expenditure		
2.1.3.	Subsidies, grants and social benefits		
2.1.4.	Current contributions to the European Union budget and international cooperation		
2.1.5.	Maintenance cost transfers		
2.2.	Expenditure for capital investments	3 000	2 997

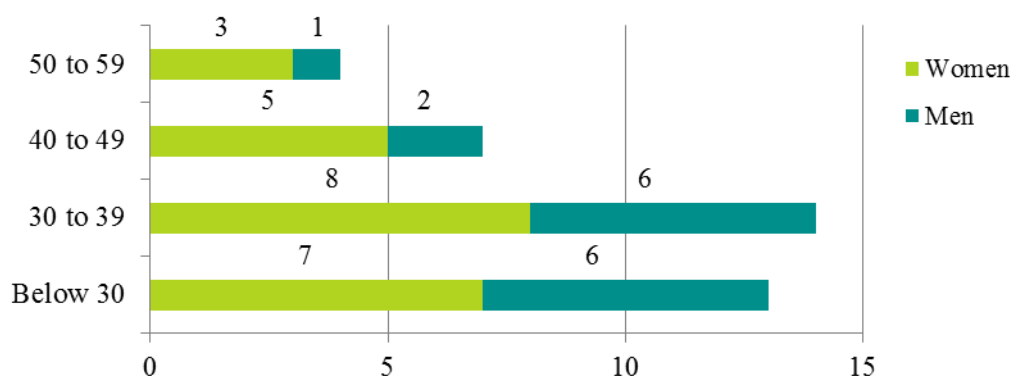
3.2 Personnel

81. In 2012, the Competition Council had 45 job positions, out of which 38 – state civil servant positions and the remaining seven – employee positions.

82. The actual number of persons employed at the institution in late 2012 was 38 persons, 32 of them were state civil servants and six – employees.

83. In 2012, 61 % of the Competition Council's personnel were women and 39 % - men (see Figure 6). The average age of personnel at the end of reporting year was 34.4 years.

Figure 6. Number of personnel by age and gender groups



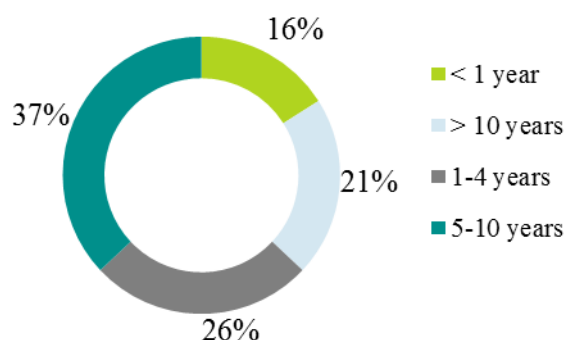
84. In 2012, state civil service relations were established with six servants, while employment legal relations were established with two employees. In 2012 three civil servants were dismissed.

85. In February 2012, the chairwoman of the Competition Council was appointed to civil service position in another public administration authority based on Article 37 (1) of the State Civil Service Law. At the end of June 2012, state civil service relations were established with the new chairwoman of the

Competition Council based on the decree of the Cabinet of Ministers regarding appointment to the position.

86. At the end of the reporting year, 21 % of the employees had worked at the institution for more than 10 years. Breakdown of personnel by length of employment at the institution is shown in Figure 7.

Figure 7. Breakdown of personnel by length of employment at the Competition Council



87. At the end of 2012, 47 % of the personnel had been awarded the highest 6th qualification degree, while 16 % – 5th qualification degree.

3.2.1 Education of the Personnel

88. In 2012, 37 of 38 employees of the institution had higher education and 23 employees or 60 % of the total number of personnel had obtained master's degree.

89. Considered specific nature of the institution, the majority of employees have acquired legal or economic education. The rest have acquired education in engineering sciences, management and other. Several servants have acquired two higher educations.

90. In 2012, after assessing performance results of the personnel, the necessary training was identified and 28 employees were sent to seven trainings offered by the State administration school and four training courses developed by other natural and legal entities to improve qualification.

91. The employees of the Competition Council attended training in such fields as administrative process, prevention of corruption, public procurements, communication and public presentation skills, manager development, project implementation and assessment of results, occupational safety and labour protection and other.

3.3 Improving Performance of the Institution

92. The activity of the Competition Council is based on the principles of good governance that according to the State Administration Structure Law include openness with respect to private individuals and the public, the protection of data, the fair implementation of procedures within a reasonable time period and other regulations aimed at ensuring that State administration observes the rights and lawful interests of private individuals.

93. Within the reporting year the Competition Council carried out employee survey that made it possible to identify the necessary improvements of work organization, circulation of information and motivation system.

94. Based on the results of the employee survey, the knowledge management has been improved significantly within the institution, ensuring that information and experience are collected at the level of the entire institution instead of being separately collected within investigation of certain cases. Team work methods play the main role in work organization in one and different structural units.

95. Work with investigation of violations of the competition law requires comprehensive knowledge in law and competition law in particular, economics, and accounting and information technology. Employees must be able to orient quickly in any sector of national economy. Thus, in 2012, for the purpose of ensuring efficient training and experience continuity, the Competition Council established a **mentor institute for introducing new employees to the work**, ensuring that highly experienced experts – mentors help the new employees obtain skills and knowledge necessary for the work.

96. Last year, preparatory work was carried out with an aim to use the state information system NEVIS in order to improve personnel management policy and planning and assessments of performance in particular.

97. For the purpose to get a deeper understanding of topical business issues in different industries, the Competition Council intensified information activities by organizing meetings and seminars that will provide feedback to the institution.

98. In order to ensure maximum quality and fast investigation of cases by balancing openness and data protection, the Competition Council continued improvements of internal regulations.

99. Yet, for the purpose of ensuring fast response to threats to equal competition, the Competition Council applied new approach to consideration of applications in situations where it was considered useful, endeavouring to solve existing or potential competition distortions or disputes through negotiations without initiation of an investigation case or by giving a warning.

4. Communication with the public

100. One of the key tasks of the Competition Council is promotion of competition by improving public understanding of the competition law and the influence of violations on business environment and consumers.

101. By informing and educating the public, the Competition Council strives to develop a knowledge-based competition culture, and thus promoting consumer interest-oriented market and strong competition among fair enterprises according to its mission.

102. When the public understands the competition law and its meaning, they are intolerant of violations of the competition law, thus reducing the possibility to violate the law, while making it more possible for the supervising authority to detect violations of the law.

4.1 Public Information and Education Measures

103. An essential communication channel between the Competition Council and its target audience is the **website** of the authority <http://www.kp.gov.lv>. In 2012, the Competition Council celebrated the 20th anniversary since foundation of competition supervisory authority in Latvia and it developed and delivered a new, completely redesigned website to its users.

104. The new website contains detailed explanation of the key principles of the competition law and application thereof, as well as cooperation with the Competition Council by reporting violations and during investigation. Some sections are intended for consumers and organizers of procurements, providing

information necessary exclusively for these groups. Among the main improvements are expanded search option in the database of decisions of the Competition Council containing all decisions of the authority adopted since 2002, as well as related court rulings and administrative contracts. The new website has a search function that helps to find documents quickly by search criteria or key word. There is also an interactive educating game that allows the visitors to model different situation and test their ability to recognize violations of the competition law. The new content has also new design solution.

105. The Competition Council **informs mass media** on the adopted decision and latest news in competition control on regular basis because each single decision applies not only to the particular case and market participants but also to the entire competition environment. Publicly available information on detected violations clearly shows consequences of illegal activities, thus increasing public awareness and promoting legal activities.

106. In order to explain competition and tendencies in different product and service markets by assessing in advance the importance of information to the public, the Competition Council informs mass media on the results of market surveillance and inquires it has carried out.

107. Along with explanation of the nature of the competition law, experts of the Competition Council **provide lectures and seminars** for employees of certain companies and students of Latvian higher education institutions and employees of the state and local governments. Among the key activities in 2012 is a seminar for procurement specialists of Daugavpils local government, lectures in conferences held by industry associations, seminars for employees of large construction companies and electricity companies, participation in a conference dedicated to the latest news in the field of competition law and public procurements.

108. Within the Open Day of public administration the Competition Council invited students to attend the lecture “State as linesman on the business game field” and told them about the competition law in the history and today.

109. As part of their daily work, employees of the Competition Council provides **consultations on competition issues** to representatives of legal service offices, entrepreneurs and other interested persons in writing, by telephone or within consulting hours for visitors at the office. In 2012, over 200 consultations have been provided.

4.2 Public Involvement

110. **Cooperation** between the Competition Council and **non-governmental sector** (entrepreneurs and their professional associations, civil society) plays an important role in development of competition policy and culture – exchange of information within development of laws and regulations allows to timely prevent possible shortcomings, while consultations on effective law ensure understanding thereof and promote compliance with the law.

111. Public involvement –notifications of market participants on possible violations of the competition law is an essential source of information that helps the Competition Council detect and prevent market distortion.

112. In order to discuss topical competition policy issues, last year representatives of the Competition Council have met representatives from the Latvian Agricultural Cooperatives Association, the Latvian Advertising Association, the Latvian Traders Association, AKKA/LAA, the Pharmacy Association, the National Electronic Mass Media Council, the Latvian Federation of Food Enterprises, the Latvian Publishers' Association, Federation of European Publishers, the Latvian Association of Waste Management Companies and other organisations, as well as market members – enterprises.

113. Another important type of public involvement is its **assessment of performance of the institution**. Thus, in 2012, the Competition Council carried out a polling to find out the degree of awareness of enterprises, association and lawyers' offices of the competition law, to receive feedback on performance of the institution, as well as to acquire an understanding of industries where enterprises encounter the most competition issues. Overall, enterprises have approved the work done by the Competition Council; however, they emphasized the need for further information about the competition law, specific decision and related court rulings. Enterprises and lawyers' offices in particular also provided proposals for improvement of the institution's work, including, the need to strengthen the independence of the institution and involvements of industry experts in investigation of violations.

5. Plans for 2013

114. The key priority of the Competition Council **in the field of protection and control of competition** will be combating the most severe violations of the Competition Law – prohibited agreements and abuse of dominant position.

115. In 2013, the Competition Council will pay particular attention to activities of undertakings in terms of euro introduction in order to prevent artificial rise in prices for goods and services under the pretext of currency exchange. As regards abuse of dominant position, the Competition Council will focus on market destabilizing cases.

116. In order to use the resources of the authority as efficient as possible and to focus mainly on the most severe violations, prevention is one of the priorities for 2013 by promoting voluntary elimination of possible violations and disputes.

117. Comprehensive market surveillance activities are expected to be carried out that allow fast obtaining and analysing information on competition in the largest consumer markets, as well as finding solution to improve it. In 2013, the Competition Council plans to carry out surveillance in markets with long-term natural monopolies, markets that significantly affects daily household costs and markets that either face changes in regulatory framework or require changes in the regulatory framework of the industry. Particular attention will be paid also to public procurements of state and local governments and situations where local governments get involved in business activities. Post-surveillance is expected to be carried out in a number of markets where the Competition Council has detected violations.

118. **For the purpose of promoting competition** the Competition Council plans to address market members, industry and professional associations, as well as the state and local government institution more actively through lectures, conferences and seminars to explain the competition law.

119. In 2013, more and more corporate associations, legal offices, state and local government authorities and higher education experts are expected to be involved in promotion of respecting the competition rights.

120. In order to help undertakings to better understand and exercise their competition rights, as well as to give them an opportunity to find out the latest news in the field of competition surveillance in Latvian and Europe at one place, a newsletter is expected to be published on a regular basis in 2013. Every interested person will be able to subscribe to the newsletter to receive it in e-mail by using the application from posted on the website of the Competition Council <http://www.kp.gov.lv>.

121. **In the field of improvement and development of capacity of the Competition Council** the main objectives for 2013 are related to improvement of regulatory framework, improvement of work organization of the authority and strengthening international activities.

122. Amendments to the regulatory framework are expected to strengthen independence of the Competition Council, expand possibilities if it is useful in particular situation, prevent possible violations as efficient as possible without initiating a case, make the leniency programme more attractive to undertakings, give an opportunity to the Competition Council to prioritize the issues to be considered without spending resources on issues that causes no serious damage to the market.

123. In order to ensure targeted and focused combating of cartels by detecting and preventing such violations and providing information and educating undertakings and budget institutions all across Latvia, a new structural unit is expected to be established in 2012. The unit will consist of experienced personnel of the Competition Council who has been working on different violation cases within the analytical departments. For the purpose of improving the work with analysis of electronic evidence, the informatics processing division will be established.

124. In 2013, it is also planned to find solutions to reduce bureaucracy, quality management in the authority, as well as greater collaboration with customers of the authority and the society in general. The personnel policy is expected to be strengthened by organizing training, improving working conditions and enhancing motivation of the personnel.

125. As regards international cooperation, a quality strengthening of involvement of the Competition Council is expected by active participation in working groups of international organizations and providing experience of Latvia in control of competition law for international evaluation and exchange of experience.