

Unclassified**English - Or. English****13 November 2019****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Hub-and-spoke arrangements – Note by Latvia**

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This document reproduces a written contribution from Latvia submitted for Item 7 of the 132nd Competition Committee meeting on 3-4 December 2019.
More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/hub-and-spoke-arrangements.htm>

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Latvia

1. The relevance and investigation of hub-and-spoke cases

1. It should be pointed out that the Competition Council of Latvia (CC) does not have much case law of hub and spoke agreements. There is one clear case in which this type of illegal information exchange was used. In CC case law also include 2 cases where vertical and horizontal communication were present forming in the result cartel infringement. In two mentioned cases the infringement was in the form of price fixing, but in one case cartel mainly affected the public procurements and involved market sharing.
2. From one case CC investigated we can say in hub-and-spoke cases the main difference from classical RPM cases was that there was the same object to fix the prices at particular level like in classical cartel were horizontal communication prevail. Hub and spoke should mainly be considered as a form how competitors exchange of information.
3. That means leniency program also would apply to the hub-and-spoke agreements. From the theory of harm point of view the harm to customers does not differ from classical cartels having as the object price fixing. As hub-and-spoke cases are treated the same as classical cartel infringements such infringement investigations have the same priority. The hub-and-spoke may need to be proved with additional evidences what complicate investigation.
4. Above mentioned cases were started based on the different initial sources of information. One case was opened on the basis of the evidence found in the case of abuse of dominant position case, the case was started after a leniency application, while the another was investigated based on the application from a market participant who suffered from infringement. In all these cases CC made dawn rides.

2. Hub-and-spoke case¹

5. In April 2015, the CC initiated case against 6 undertakings based on materials previously gathered in the case of abuse of dominant position. In the abuse case CC found that the KNAUF has dominant position in plasterboard market in Latvia territory and that loyalty rebates applied by the KNAUF/NORGIPS² created essential barriers for other competitors to sell their production to the retail chains who were selling building materials. That significantly undermined effective competition in the market excluding other producers' access to biggest retail chains.
6. During inspection of the abuse case CC gathered evidences which contained signs of prohibited agreement from KNAUF/NORGIPS and retailers communication. This infringement was implemented by regular information exchange between Knauf and retailers of building materials (gypsum (including plasterboard), lime cement mixture and other products). The information also showed that the communication was mainly vertical

1 Press release, 13.10.2017 (in English); decision of 31 August 2017 (in Latvian).

2 KNAUF and NORGIPS forms one single economical unit belonging to the same holding of companies.

between Knauf and each retailer. Communication revealed efforts to maintain retail resale price not lower than selected minimum level in the market. Although communication predominantly was vertical the aim of such communication was to influence through the supplier KNAUF/NORGIPS prices at horizontal level.

7. In this case CC took decision founding infringement in 2017 finding supplier and retailers liable for the cartel infringement. The total duration of this infringement was almost 10 years although not all retailers were active from the beginning. Now this case is pending at court.

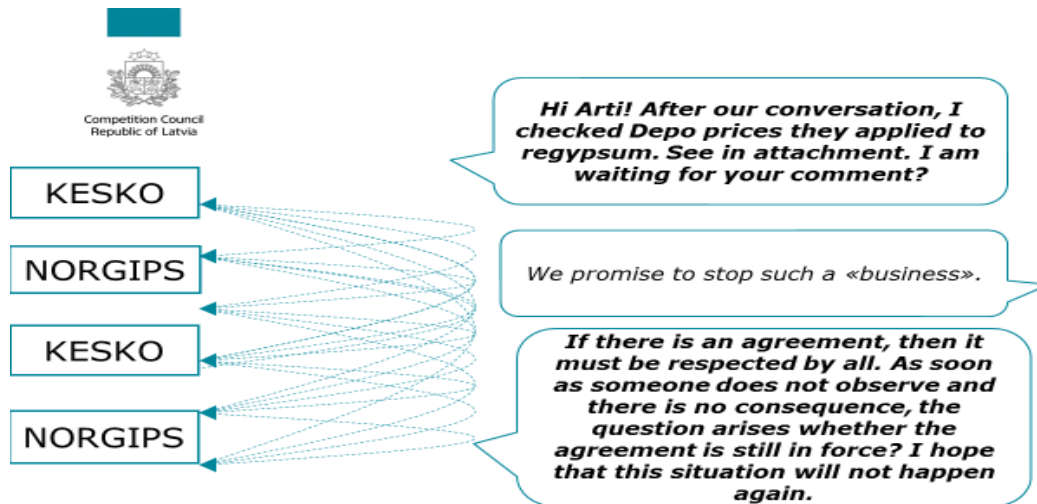
8. Information which was collected during inspections was mostly email correspondence which also served as main evidence in this case but also other accounting documents (bills, etc.) was analysed to check the prices applied. It may be concluded that proofs of the hub-and-spoke case may differ from traditional cartel as this case may require analysis of additional indirect evidences to prove the common understanding between competitors. Evidences that proof buyers' interest or object to maintain retail prices at fixed or minimum level in the market may follow from communication with supplier when the latter is asked from retailer to stop pricing done by another competitor that is below agreed price level.

9. Scheme of hub-and-spoke infringement may involve different steps what are relevant to prove such infringement:

- regular information exchange between supplier and retailers regarding resale price level for goods (such as plasterboard, glue and other building materials);
- recommendation of resale prices by supplier and monitoring how it is being respected by retailers. Also, retailers monitor may engage in monitoring of competitors prices;
- benefits in the form of rebates is provided by the supplier if minimum price level is respected;
- retailers report to supplier about non-compliance and supplier usually intervene requiring other retailers to adjust prices. Also, supplier may affect with threats to deny the rebate to this retailer.

10. In this case information was exchanged and prohibited agreement was formed using supplier as intermediary nevertheless retailers knew or ought to know of each other's role in the horizontal price fixing. Hub and spoke may not involve a lot of reciprocal communication evidences between supplier and retailer about the price fixing due to the fact that communication from the retailer mainly is initiated in situations when other competitors prices are below fixed price level. Although the hub-and-spoke may involve certain deviations from commonly agreed price level that does not form retailer's withdrawal from the cartel especially if above mentioned communication from time to time is repeated by the same retailer.

11. For a better demonstration of communication between the supplier and retailers example is showed below.



12. Knauf/Norgips were the initiators of the infringement. Whole system was based on the regular of the recommended resale prices to retailers. Supplier also ordered to his staff to monitor how prices were respected by retailers. At the same time retailers who follow to Knauf requirements received monthly bonuses at the end of the month (this was approved by accounting invoices). But if a retailer did not comply with the set price level it was reported to Knauf by other retailers (because they do not contact each other directly, only information exchange by Knauf). And then Knauf forwarded that e-mail (which contain a complaint) to the retailer who have a problem with the discipline/noncompliance.

3. Other cases with the mix of vertical and horizontal communication

13. There are also 2 significant cartel cases investigated by the CC where vertical upstream suppliers influenced, controlled and facilitated information exchange horizontally. These cases are more closer to classical cartels because there were direct horizontal information exchange. These cases were:

- Samsung case in 2009.³ The CC found that in 2007 and 2008 Samsung Electronics representative in Baltics and the 4 biggest wholesale distributors of these goods in Latvia who were wholesalers in Latvia territory also operated in retail with brick and mortar shops and online stores engaged in concerted practices having as their objective resale price maintenance and the restriction of free trade for Samsung goods. CC concluded that Baltic representative was active participator in mutual correspondence, i.e. emails exchanges among distributors with the main aim to control pricing level of independent retailers (internet shops) in the market. The wholesaler's actions contained the fixing of the resale pricing and market sharing. Both vertical and horizontal were regarded as consecutive and logically complementary to cartel infringement.

³ Press release, 20.11.2009 (in English); decision of 30 October 2009 (in Latvian).

- In 2015 CC found⁴ that one regional importer of Volkswagen cars and five dealers shared information about the tenders. Dealers agreed for the win of tenders while other participants submitted offers that are coordinated or refrained from participation in the tender. Regional importer active in the vertically upstream market not only knew through the emails exchanged among all and did not object to the market sharing among dealers, but also to some extent contributed and supported the infringement by acting as an intermediary during exchange of information. This case is still pending in the court.

14. The CC practice shows that this type of information exchange format is used in wholesaler /producer/retailer relationship. But it is certainly not possible to give a general conclusion from just a few cases in which product markets, such unlawful practices would be more common.

15. About the RPM cases. From the moment of introducing prioritization strategy in 2015 (after consultation in 2014),⁵ practically in all investigations which revealed the resale price maintenance (RPM) or signs of that were solved by CC soft enforcement tools requiring to put to an end supplier (upstream company) such behaviour. Usually, these were individual contracts where one supplier required one of its distributors to fix resale including such condition in the written contract or requiring fulfilment of such condition through e-mail communication or in other form. The latest sole RPM case where liability and fines were applied CC took decision was at 2010 and involved and involved RMP to particular goods in one supply contract for one brand car oil distribution.⁶

16. Education activities in case of cartels and other infringements. Taking into account the fact that in vast majority CC detect cartels in public procurements, where the agreement is between competitors / bidders, the authority dedicates his limited advocacy resources to educate and provides guidance to contracting agencies on how to identify a signs of possible cartel in public procurement. In parallel, CC remind that also such kind of information exchange as hub-and-spoke is recognized and prosecuted as cartel.

4 Press release, 20.01.2015 (in English); decision of 15 December 2014 (in Latvian).

5 Case prioritization strategy, 2015 (in Latvian).

6 Press release, 01.11.2010 (in Latvian).