

Competition - Estonia

Amendments to Competition Act and Criminal Code

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On March 15 2007 the Estonian Criminal Code and Competition Act were amended to provide that a company can be held liable for anti-competitive practices conducted not only by its management, but also by its employees.

Previously the Competition Board could fine a company for carrying out anti-competitive practices only if it could prove the direct involvement of a member of the management board in such activities. However, in practice the board was unable to fine companies which had clearly entered into cartel agreements regarding, for example, price increases or markets because the relevant meetings were held and the agreements were made by sales managers or other officials of a similar level who were not members of the management board. If a connection between the anti-competitive arrangements and the acts of the management board could not be established, the courts usually overruled the decision of the Competition Board.

Since March 15 2007 a company and its management board can no longer hide behind sales managers or other employees if they have been involved in anti-competitive agreements or if the company is the dominant player on the market and has engaged in activities that are considered to be an abuse of its dominant position under the Competition Act. Usually, the company is fined for anti-competitive arrangements or for abuse of a dominant position because it is generally the company which benefits from such practices, even though the actual agreement was concluded by employees. For example, where the salaries of employees are linked to company sales, it is also in the employees' interests to increase sales and profits in order to receive bonuses. Such bonuses may drive employees to take measures to increase the company's turnover which may be considered as infringements of the Competition Act.

Under the newly amended Competition Act, a company may be fined Ekr500,000 (approximately €32,000) for a first abuse of its dominant position; under the Criminal Code, a second abuse is punishable by a fine of Ekr250 million (approximately €16 million). Under the Criminal Code, a company can be fined up to Ekr 250 million (approximately €16 million) if it:

- violates a prohibition against agreements, decisions or concerted practices that prejudice free competition;
- enters into an agreement or makes a decision regarding concerted anti-competitive practices; or
- engages in anti-competitive practices.

Therefore, companies should carry out better surveillance of their employees' work and arrangements, as employees' unawareness of what is allowed under the Competition Act now poses a bigger risk to their employers.

For further information on this topic please contact [Kaja Leiger](#) at [Luiga Mody Hääl Borenius](#) by telephone (+372 665 1888) or by fax (+372 665 1899) or by email (kaja.leiger@lmh.ee).

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