Text consolidated by Valsts valodas centrs (State Language Centre) with amending regulations of:

13 September 2016 [shall come into force from 16 September 2016];

7 January 2020 [shall come into force from 10 January 2020].

If a whole or part of a paragraph has been amended, the date of the amending regulation appears in square brackets at the end of the paragraph. If a whole paragraph or sub-paragraph has been deleted, the date of the deletion appears in square brackets beside the deleted paragraph or sub-paragraph.

Republic of Latvia

Cabinet

Regulation No. 179

Adopted 29 March 2016

**Procedures for Determining a Fine for the Infringements Provided for in Section 11, Paragraph One, Sections 13 and 14.1 of the Competition Law and Sections 5, 6, 7, and 8 of the Unfair Retail Trade Practices Prohibition Law**

[*7 January 2020*]

*Issued pursuant to*

*Section 12, Paragraph five, Section 12.1, Paragraph seven, Section 14, Paragraph four, and Section 14.2, Paragraph four of the Competition Law and Section 9, Paragraph four of the Unfair Retail Trade Practices Prohibition Law*

[*7 January 2020*]

**I. General Provisions**

1. This Regulation prescribes:

1.1. the procedures for determining a fine for the infringements provided for in Section 11, Paragraph one of the Competition Law, and also special features of the financial year net turnover calculation in separate cases, criteria for determining the amount of fines, circumstances mitigating and aggravating the liability;

1.2. the procedures for determining a fine for the infringements provided for in Section 13 of the Competition Law, and also special features of the financial year net turnover calculation and procedures for calculating the amount of fine taking into account the gravity and duration of the relevant infringement, circumstances mitigating and aggravating the liability, and the cases where there is the right to a reduction of the fine;

1.2.1the procedures for determining a fine for the infringements provided for in Section 14.1 of the Competition Law, and also special features of the financial year net turnover calculation in separate cases, criteria for determining the amount of fines, and circumstances mitigating and aggravating the liability;

1.3. the procedures for imposing a fine for the infringements provided for in Sections 5, 6, 7 and 8 of the Unfair Retail Trade Practices Prohibition Law, and the criteria for determining the amount thereof, circumstances mitigating and aggravating the liability, and also the reduction of the fine if net turnover of the retailer in retail is less than its total net turnover in the last reporting year;

1.4. the procedures by which the Competition Council shall release from a fine and reduce the fine under the leniency programme, and also the requirements for the participants of the leniency programme.

[*13 September 2016; 7 January 2020*]

2. Terms used in this Regulation:

2.1. prohibited vertical agreement – within the meaning of this Regulation an agreement that is not exempted from the prohibitions referred to in Section 11, Paragraph one of the Competition Law which has been entered into between market participants each of which conducts economic activity in a different level of the production or distribution of goods, and applies to the purchase or sales provisions of goods;

2.2. market participant – within the meaning of this Regulation the market participant referred to in Section 1, Clause 9 of the Competition Law, and also a retailer within the meaning of the Unfair Retail Trade Practices Prohibition Law.

3. A fine shall be calculated as a percentage of the net turnover for the last closed reporting (financial) year of a market participant before the date of detecting the infringement.

4. [7 January 2020]

5. The sum of the following positions of income shall be recognised as the net turnover of credit institutions:

5.1. income from interest;

5.2. income from securities;

5.3. commission remuneration received;

5.4. net profit acquired from financial operations;

5.5. income from other type of activity.

6. Income included in the annual accounts and consolidated accounts of credit institutions shall be included in the net turnover of credit institutions.

7. The gross value of signed premiums which includes all sums received and to be received for insurance contracts (also reinsurance premiums) entered into by an insurance company or entered into in the name thereof by deducting the tax payments and fees or mandatory payments which are imposed on an insurance premium or the total amount of premiums, shall be recognised as the net turnover of insurance companies.

8. If a market participant is a natural person who is a payer of personal income tax, the fine shall be calculated as a percentage of the income from the last closed reporting year which the natural person has earned from economic activity.

9. If it is not possible to draw up a report on the complete last closed reporting year for a market participant, the fine shall be calculated as a percentage of the net turnover of the market participant for 12 calendar months beginning with the date when it commenced activity in the relevant market. If less than a year has passed from the commencement of activity until the date of detecting the infringement, the fine shall be calculated from the net turnover of the market participant by counting from the day when the activity was commenced until the last complete month prior to the date of committing the infringement.

10. If the net turnover of the last financial year of a market participant has been expressed in a foreign currency, the total amount of a fine in EUR shall be determined according to the exchange rate to be used in accounting on the day when the infringement was detected.

11. If a registered or non-registered union of market participants (for example, association, partnership, society, foundation) or an official thereof has committed the infringement referred to in Section 11, Paragraph one of the Competition Law, the fine shall be imposed on the market participants which are members of the union and have participated in the abovementioned infringement, or on the union of market participants.

**II. Amount of a Fine**

12. In determining the amount of a fine, the gravity and duration of an infringement shall be taken into account.

13. In determining the gravity of an infringement, the following shall be taken into account:

13.1. the type of the infringement;

13.2. the consequences caused by the infringement or the possible consequences thereof;

13.3. the part of each market participant involved in the infringement.

14. According to the type of infringement, prohibited vertical agreements and prohibited co-operation agreements, infringement of rules for free and fair competition (Section 14.1 of the Competition Law), and also prohibited unfair retail trade practice shall be deemed a mild infringement, abuse of the dominating position and vertical agreements the goal of which is to restrict the opportunity of a purchaser to determine the resale price – a serious infringement, cartel agreements and agreements containing restrictions on the import or export of goods – an especially serious infringement.

[*7 January 2020*]

15. In evaluating the role of each market participant involved in an infringement, the following shall be taken into account if at least one of the following conditions exists:

15.1. the market participant has been the initiator of the infringement;

15.2. the market participant has had an active or passive role in the infringement.

16. The total amount of a fine for one infringement shall be calculated by summing up the fines specified in accordance with Paragraphs 17 and 18 or 19 of this Regulation.

17. Taking into account the level of gravity of an infringement, a fine from the net turnover of the last financial year shall be determined as follows:

17.1. if a mild infringement, manifested as a prohibited unfair retail trade practice, has been committed – up to 0.15 per cent;

17.2. if a mild infringement, manifested as a prohibited vertical agreement or a prohibited horizontal co-operation agreement, has been committed – up to 0.5 per cent;

17.2.1if a mild infringement, manifested as an infringement of rules for free and fair competition (Section 14.1 of the Competition Law), has been committed – up to 1 per cent;

17.3. if a serious infringement has been committed – from 0.5 to 1.5 per cent;

17.4. if an especially serious infringement has been committed – from 1.5 to 7 per cent.

[*7 January 2020*]

18. Taking into account the duration of an infringement, the amount of fine from the net turnover of the last reporting year shall be determined as follows:

18.1. if the duration of the infringement does not exceed one year, the amount of fine specified in accordance with Paragraph 17 of this Regulation shall not be increased;

18.2. if the infringement continues for more than a year, but does not exceed five years, the fine shall be up to 0.5 per cent;

18.3. if the infringement continues for more than five years, the fine shall be from 0.5 to 1 per cent.

19. Taking into account the duration of an infringement, the amount of a fine for the infringement which is specified in Sections 5, 6, 7 and 8 of the Unfair Retail Trade Practices Prohibition Law, shall be determined as follows from the net turnover of the last reporting year:

19.1. if the duration of the infringement does not exceed one year, the amount of fine specified in accordance with Sub-paragraph 17.1 of this Regulation shall not be increased;

19.2. if the infringement continues for more than one year – up to 0.02 per cent;

19.3. if the infringement continues for more than five years – up to 0.04 per cent.

20. The total amount of a fine may be increased in the following cases:

20.1. if at least one of the following aggravating circumstances exists:

20.1.1. a market participant has committed the same type of infringement repeatedly, and the Competition Council has detected it and taken a relevant decision;

20.1.2. a market participant has directly or indirectly forced other market participants to perform activities with which the prohibition referred to in Section 11, Paragraph one of the Competition Law is being infringed;

20.1.3. a market participant hinders investigation and hides the committed infringement;

20.2. if the Competition Council determines that it is necessary to increase the fine in order to exceed the income which a market participant has earned by committing the infringement referred to in Section 11, Paragraph one, Section 13 or 14.1 of the Competition Law (if it is possible to evaluate the sum of the illegally earned income).

[*13 September 2016; 7 January 2020*]

21. If the Competition Council determines that a market participant which has been imposed a fine does not fulfil the legal duty imposed on it, the fine may be increased up to the maximum amount laid down in Section 12, Paragraph four and Section 14, Paragraph three of the Competition Law.

[*13 September 2016*]

22. The Competition Council may reduce the total amount of a fine in the following cases:

22.1. if mitigating circumstances exist, for example:

22.1.1. the infringement has been discontinued as soon as the market participant has received information from the Competition Council regarding the possible infringement referred to in Section 11, Paragraph one or Section 13 of the Competition Law or Section 5, 6, 7 or 8 of the Unfair Retail Trade Practices Prohibition Law;

22.1.2. the market participant has voluntarily eliminated the consequences of the infringement before the Competition Council has taken a decision to detect the infringement;

22.1.3. the market participant upon its own initiative has provided complete and true information or evidence which have a significant role in detecting the infringements referred to in Section 11, Paragraph one, Section 13 or 14.1 of the Competition Law or Section 5, 6, 7 or 8 of the Unfair Retail Trade Practices Prohibition Law;

22.1.4. the market participant has provided evidence that during the period of time while it was the participant of an illegal agreement it actually did not implement this agreement;

22.1.5. the market participant has entered into settlement regarding settling the dispute and compensated damages caused by the committed infringement;

22.2. if the net turnover of the last closed reporting year of the market participant in the market where the infringement has taken place, is less than 10 per cent of the net turnover for the last closed financial year of the market participant;

22.3. in respect of the infringements of the Unfair Retail Trade Practices Prohibition Law if the net turnover for the last reporting year of the market participant in retail trade is less than its total net turnover in the last reporting year;

22.4. in respect of the infringements of the Unfair Retail Trade Practices Prohibition Law taking into account the turnover of the market participant from the goods and services which directly or indirectly refer to the goods or services involved in the infringement.

[*13 September 2016; 7 January 2020*]

23. If the market participant has committed several infringements referred to in Section 11, Paragraph one or Section 13 of the Competition Law and they have been examined concurrently in one case, the amount of a fine shall be determined individually for each infringement of a Clause of the relevant Section. The final sum of the fine shall be calculated within the framework of the fine which has been specified for the most serious infringement.

24. If the market participant has committed the infringements both referred to in Section 11, Paragraph one and Section 13 of the Competition Law and they have been examined concurrently in one case, the amount of a fine shall be determined individually for the infringement referred to in each Section. The final sum of the fine shall be calculated within the framework of the fine which has been specified for the most serious infringement.

25. If more than five years have passed since termination of an infringement and the infringement has not left significant negative consequences on the market, the Competition Council may impose a fine in the amount of EUR 350.

[*13 September 2016*]

**III. Release from a Fine and Reduction of a Fine under the Leniency Programme**

[*13 September 2016*]

26. The participant of a horizontal cartel agreement (hereinafter – the cartel participant) has the right to address the Competition Council with a written application regarding:

26.1. assigning the first sequence number for release from a fine;

26.2. release from a fine;

26.3. reduction of a fine.

[*13 September 2016*]

27. An owner of a cartel shall submit the application referred to in Paragraph 26 of this Regulation to the authorised person of the Chairman of the Competition Council.

[*13 September 2016*]

28. Prior to submitting an application the cartel participant may anonymously consult with the Competition Council regarding general aspects of application of the leniency programme.

[*13 September 2016*]

29. Information, insofar as it is known to the submitter of the application at the time of submitting the application, regarding cartel participants, the objective, nature and duration of operation of the cartel, the markets and geographic area of the relevant goods shall be indicated in the application regarding assigning the first sequence number for release from a fine.

30. The cartel participant shall be released from a fine if the following conditions are met:

30.1. the cartel participant upon its own initiative has been the first to submit an application to the Competition Council regarding release from a fine. The following information shall be included in the application, insofar as it is known to the submitter of the application at the time of submitting the application:

30.1.1. names and legal addresses of the submitter of the application and other cartel participants;

30.1.2. description of the cartel: the objective, principles of operation, the markets of the influenced goods, duration of activities and geographical area;

30.1.3. evidence at the disposal of or available to the submitter of the application and other information related to the cartel regarding the facts and circumstances which are sufficient for initiation of proceedings regarding infringement of the prohibition of a cartel agreement;

30.1.4. information at the disposal of the submitter of the application which is related to submission of the application or planned submission to the competition institution of the European Union member State or other state;

30.2. at the moment of receiving an application the Competition Council does not have sufficient evidence at its disposal which could be the basis for initiating a case or detecting infringement of the prohibition of a cartel agreement.

30.3. the submitter of the application:

30.3.1. prior to submitting the application, has not destroyed, forged or hidden evidence related to the cartel;

30.3.2. has not been the initiator of the cartel and has not performed activities in order to force other market participants to participate in the cartel or to continue participation therein;

30.3.3. after submitting the application has immediately terminated participation in the cartel if the Competition Council has not determined otherwise;

30.3.4. upon its own initiative or upon request of the Competition Council, has provided all evidence at the disposal thereof or available thereto and other information related to the cartel regarding the facts and circumstances, has truly, actively and continuously co-operated with the Competition Council from the time of submitting the application until the taking of a decision;

30.3.5. has not disclosed the fact regarding submitting the application and co-operation with the Competition Council in relation to an investigation of an infringement of the prohibition of the cartel agreement to other cartel participants or other persons.

[*13 September 2016*]

31. An application regarding release from a fine shall be appended a written confirmation that the cartel participant:

31.1. has submitted the application upon its own initiative;

31.2. has provided all the information and evidence regarding the cartel, which is at its disposal or available thereto at the time of submitting the application;

31.3. prior to submitting the application has not destroyed, forged or hidden evidence that is related to the cartel;

31.4. has not been the initiator of the cartel and has not performed activities in order to force other market participants to participate in the cartel or to continue participation therein;

31.5. has not disclosed information regarding co-operation with the Competition Council to other cartel participants or other persons;

31.6. undertakes to submit to the Competition Council all the information and evidence regarding the cartel at its disposal or available thereto without delay;

31.7. undertakes to truly, completely, actively and continuously co-operate with the Competition Council from the time of submitting the application until the taking a decision by the Competition Council.

[*13 September 2016*]

32. The cartel participant which may not apply for release from a fine may submit an application regarding reduction of a fine. The fine shall be reduced if the submitter of the application complies with the requirements referred to in Sub-paragraphs 30.3.1, 30.3.3, 30.3.4 and 30.3.5 of this Regulation, submits evidence and other information related to cartel infringement which significantly supplement the evidence and information at the disposal of the Competition Council, and the written certification appended to the application regarding reduction of the fine complies with the requirements referred to in Paragraph 33 of this Regulation, in the following amount:

32.1. for the cartel participant who was the first to submit the application regarding reduction of the fine – in the amount of 30 to 50 per cent;

32.2. for other cartel participants who submitted the application regarding reduction of the fine – in the amount of 20 to 30 per cent.

[*13 September 2016*]

32.1 A fine shall be reduced in the amount of 50 per cent for the cartel participant who has submitted evidence regarding other cartel infringement and whom the Competition Council has released from the fine for such cartel infringement.

[*13 September 2016*]

33. An application regarding reduction of the fine shall be appended a written confirmation of the cartel participant in which the information referred to in Paragraph 31 (except Sub-paragraph 31.4) of this Regulation is included.

34. The Competition Council shall, within five working days after receipt of the application, notify the submitter of the application in writing regarding receipt of the application by indicating the date and time of receipt of the application, or refusal to accept it. The reasons for refusal shall be indicated in the notification regarding refusal to accept an application.

[*13 September 2016*]

35. In addition the date and time until which the applicant submits a written application regarding release from a fine in accordance with the requirements referred to in Sub-paragraph 30.1 and Paragraph 31 of this Regulation, shall be indicated in the notification regarding assigning a sequence number in the queue of submitters of applications for release from a fine.

[*13 September 2016*]

36. If the Competition Council has accepted an application of the cartel participant regarding assigning the first sequence number for release from a fine and the application regarding release from a fine has been submitted within the time period laid down by the Competition Council, it shall be deemed that the application was submitted and accepted for examination on the date when the application regarding assigning the first sequence number for release from a fine was submitted.

[*13 September 2016*]

37. The Competition Council shall not accept an application if the application does not conform to the requirements referred to in this Regulation. After elimination of deficiencies the application may be repeatedly submitted to the Competition Council.

[*13 September 2016*]

38. The cartel participant which has submitted or plans to submit an application to the European Commission regarding release from a fine for potential infringement of the competition law of the European Union, shall submit a summary of the application to the Competition Council regarding release from a fine (hereinafter – the summary of the application). The information referred to in Sub-paragraphs 30.1.1 and 30.1.2 of this Regulation, and also information regarding such European Union Member States where evidence regarding cartel is present and information regarding other applications which have already been submitted or which are planned to be submitted, including regarding the summaries of the application, shall be included in the summary of the application.

[*13 September 2016*]

39. The Competition Council shall, not later than within five working days after receipt of the summary of the application, notify the submitter of the summary of the application regarding acceptance of the summary of the application or refusal to accept it. The reasons for refusal shall be indicated in the notification regarding refusal to accept the summary of the application.

[*13 September 2016*]

40. The date and time of receipt of the summary of the application and whether the submitter of the summary of the application has been the first to submit an application regarding release from a fine shall be indicated in the notification referred to in Paragraph 39 of this Regulation.

41. The Competition Council may request additional information from the submitter of the summary of the application by specifying the date and time for submission thereof.

[*13 September 2016*]

42. If the Competition Council takes a decision to initiate proceedings regarding potential infringement of the competition law of the European Union on the basis of information in the summary of the application, the Competition Council shall notify the date and time by which the submitter of the summary of the application must submit a written application regarding release from a fine in accordance with the requirements laid down in Sub-paragraph  30.1 and Paragraph 31 of this Regulation.

[*13 September 2016*]

43. If the Competition Council has accepted the summary of the application of the cartel participant and an application regarding release from a fine has been submitted within the time period laid down by the Competition Council, it shall be deemed that the application was submitted and accepted for examination on the date of submitting the summary of the application.

[*13 September 2016*]

44. [13 September 2016]

45. [13 September 2016]

**IV. Closing Provision**

46. This Regulation shall come into force on 1 April 2016.

**Informative Reference to European Union Directive**

[*13 September 2016*]

This Regulation contains legal norms arising from Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

Prime Minister Māris Kučinskis

Deputy Prime Minister, Minister for Economics Arvils Ašeradens