

LIECHTENSTEIN

In 1991 Liechtenstein became a full Member of the European Free Trade Association (EFTA). On May 1995 the Agreement on the European Economic Area (EEA Agreement) entered into force for the Principality of Liechtenstein. The EEA-competition rules applicable to undertakings (Article 53 to 60 of the EEA-Agreement) are due to Liechtenstein's monistic legal system directly applicable in Liechtenstein.

According to Article 55 of the EEA-Agreement the EC Commission and the EFTA Surveillance Authority (ESA) ensure the application of the principles laid down in Article 53 and 54. The EFTA Surveillance Authority or the EC Commission investigate cases of alleged infringement of these principles. They will ensure that infringements are put to an end through formal decisions directed at individual undertakings, possibly including sanctions. This can be done either upon the Authority's own initiative or upon application by interested parties (complaints). Article 55 stipulates that the competent Surveillance authority shall carry out these investigations in co-operation with the competent national authorities in the respective territory and in cooperation with the other surveillance authority, which shall give it its assistance in accordance with its internal rules.

Furthermore, following the duties emanating from the EEA Agreement, Liechtenstein's civil courts will accept law suits (e.g. claims for damages) based on the competition rules of the EEA Agreement. This means, that the courts will apply European competition law and they also may make use of the possibility to refer a case to the EFTA Court in Luxembourg in order to receive an advisory opinion on the interpretation of EEA law.

In order to guarantee the enforcement of the European competition rules in cases which fall into the competence of the European Competition authorities, i.e. the EFTA Surveillance Authority and the EC Commission, Liechtenstein has introduced a law on enforcement of EEA-competition rules in 1996 (Liechtenstein Legal Gazette No. 113 of 1996). This law provides that the Office of National Economy co-operates with the EFTA Surveillance Authority or the EC Commission in the case those authorities decide to investigate in the territory of Liechtenstein. The Office of National Economy is the Liechtenstein Authority with jurisdiction for the implementation of the competition rules, unless the jurisdiction of the national courts is provided.

The law foresees the necessary competencies for the Office for National Economy to allow the surveillance authorities' investigations and to assist them. This legal assistance competence of the

Office of National Economy is strictly limited to cases where the ESA or the EC Commission have to investigate in Liechtenstein.

Insofar as is necessary to undertake those above-mentioned tasks, the Office of National Economy may request undertakings and associations of undertakings to provide information within a time limit to be set in each individual cases and, if necessary, inspect and audit the business records or have them inspected and audited by suitable experts. In the event of an investigation decision by the EFTA Surveillance Authority because an infringement of the competition rules contained in Articles 53 to 60 of the EEA Agreement is suspected, the Court of first Instance shall, on the application of the Office of National Economy, order all the premises, properties and means of transport of the undertakings to be searched.

In addition to examining the authenticity of the investigation decision by the EFTA Surveillance Authority, the Court of first Instance shall only examine whether the intended search is arbitrary or, with regard to the object of the investigation, is disproportionate. The search shall be carried out by the Office of National Economy on the basis of the court order, which shall state the reasons for the search.

As remedial measures, administrative fines or penalty payments shall be imposed if the EFTA Surveillance Authority or the Commission of the European Communities authorises Liechtenstein to adopt remedial measures and has laid down the conditions and details of these measures in its decision pursuant to Article 55, paragraph 2 of the EEA Agreement.

In the case that an undertaking distorts competition on the Swiss-Liechtenstein market, the Swiss competition authorities will intervene. If an undertaking is restricting or distorting competition in Liechtenstein and another country of the EEA, the national competition authority of that country, the EC Commission or the EFTA Surveillance Authority will handle that case. On a national level, Liechtenstein has so far no national competition legislation materially regulating prohibition of agreements and practices which may distort or restrict competition or prohibition of the abuse of a dominant market position by undertakings. The need for having such a national competition legislation in Liechtenstein is being right now looked into. Liechtenstein has had a law on unfair competition since 1992. This law can be found in the Liechtenstein Legal Gazette No. 121 of 1992.