

[Slide 1 – Title Slide]

ELEANOR FOX: Hello, I am Eleanor Fox, a professor of law at New York University. It is my pleasure to welcome you to this ICN training on state and local restraints and the extent to which competition law covers the restraints.

[Slide 2 – Introduction: State and Local Restraints]

ELEANOR FOX: Frequently, agencies use advocacy against excessive state and local restraints. That's very common, it's very well-known. ICN has an Advocacy Working Group; it has an Advocacy Toolkit. Today, we are talking about another tool because a number of countries also have law enforcement possibilities against certain excessive state and local restraints.

[Slide 3 – Introduction-2]

ELEANOR FOX: So, we are going to describe some of these restraints and some of the applications of law that applies.

[Slide 4 – Introduction-3]

ELEANOR FOX: Not all countries do have competition law that applies against state and local restraints. Some prefer, as the U.S. does, to rely on federalism principles and democratic process and advocacy. So, we are talking today about the law on the books, when it is on the books, to prohibit certain state and local restraints.

I first want to give you an idea of what in general we are talking about and I will give you some categories of such restraints that the law might cover, and then I will give you some examples. After that, I will introduce our team for the video today and turn it over to our partners on the team.

So, what are we talking about? State restraints and local restraints may be very damaging to competition. In many countries, they are the most damaging restraint to competition.

[Slide 5 – II. Legal Enforcement Against State and Local Restraints]

ELEANOR FOX: Of those nations and jurisdictions that reprehend certain state and local

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restraints, the law may fall into four categories.

The first category is very well-known and very well-adopted by most jurisdictions, and that is state-owned enterprises, enterprises that do commercial acts and are market players in the commercial market. They may be state-owned, they may be municipal-owned. Almost every competition law covers state-owned enterprises when they act in the commercial capacity, although some with exceptions.

The second category I want to mention is actually a subset of the first, and that is when a jurisdiction gives special responsibilities, like universal service to a public company and it may even be to a private company. And the question there is whether those firms have immunity when they do certain anticompetitive acts in the course of their carrying out their responsibility to the state, the scope of that immunity, or leeway.

When I turn to the third, we're getting on less traditional ground. The third is, in some cases, state and local governments might abuse power, they might abuse administrative power. The third category may apply to acts and measures of entities and bodies. For example, a municipal body or a state-owned body may decide to appropriate and monopolize an adjacent market or the state may decide to give the best market opportunities to its friends.

The fourth category is control over state subsidies and other state privileges, and this one is akin to competitive neutrality.

[Slide 6 – II. Cont'd – Examples of Offenses]

ELEANOR FOX: So, let me give you a few examples, starting from the most traditional to some of the least traditional. Examples, of course, will fall into any of those categories I mentioned before, and I'm starting out with conduct by entities that participate in the commercial marketplace.

I'll give you four examples. My first one is from Mexico. Pemex, the Mexican state-owned petroleum monopoly, acquired -- required the gas stations that it served to carry only Pemex lubricants,

thus blocking a very important market and fencing out rivals where they needed access to the market.

A second and traditional -- more traditional restraint is from Spain, where a Spanish state-owned enterprise led a cartel of industrial dairy firms.

For my third and fourth, I'm going to give you categories in which many of these restraints fall. My third is dock cases. You have a state-owned enterprise that owns a dock and it actually runs the ferry line schedule. It may run its own ferry and then it may do a kind of predation against rival ferries, such as we have a case of spraying water on the rival ferry passengers as the boat arrives in the dock. There are also -- this is the fourth category -- many post office cases where the post office is a monopolist, maybe a legal monopolist, and it decides to appropriate an adjacent market for itself.

[Slide 7 – II. Cont'd – Examples of Offenses]

ELEANOR FOX: Now, I'll turn quickly to just examples on acts and measures that are abuses of state power and caught by some competition law. My first example is China; my second example is Russia.

In China, a municipal government of Heyuan, China designated its favored company to supply the only GPS platform that would be authorized for vehicles in the municipality; therefore, blocking out the use of other GPS rival services.

And my last example is Russia. In Russia, there are a great number of cases against state and local government. And ones that catch my eye include those in which you have a state body that writes procurement specifications, requests to bid specifications. They write them to the particular unique qualifications of their friends.

All of these acts and practices and measures have been held illegal under one or another of the laws -- of competition laws that control state and local entities.

As to Russia and Lithuania -- you will hear more about Lithuania -- actually sometimes most of the competition law cases are against state and local government.

[Slide 8 – II. Cont'd – Strategy of Peru]

ELEANOR FOX: Now, I want to say a word about Peru, which has a unique competition law against illegal and excessive bureaucratic barriers. This is measures and laws. And it has the possibility to fine severely the bodies and officials who apply these laws that impose these illicit barriers, the barriers being defined in the law.

I mentioned the Peruvian law for a particular example because Peru, among other countries -- and you will hear more about Lithuania -- is strengthening the advocacy hand under the shadow of the law and, in some cases, the nations are strengthening the legal hand in -- with the help of advocacy, and as you will hear more about the symbiosis between advocacy and law enforcement. So, in Peru, over a period of two-and-a-half years, INDECOPI, the competition authority, eliminated almost 1,000 illicit, excessive state and local barriers through advocacy in the shadow of the law. And this involved these barriers imposed by 45 public bodies.

So, that is a quick breeze through the kinds of problems that we may be talking about.

[Slide 9 – Plan of the Module]

ELEANOR FOX: And I come now to our plan of action in the video.

In all of these cases in which state and local governments might violate the antitrust law, we, of course, need rules and standards. Otherwise, there would be undue impingement on the functions of state and local government. So, what we are going to do is to give you some of those rules and standards from the European Union.

And I have two colleagues who are at the European Commission Competition Directorate who will tell you about rules and standards in these areas. And then our third colleague on the video from Latvia, who will tell you about the view from a particular nation that faces a huge number of restraints from state and local governments, and Lithuania likewise.

So, let me introduce our cast of characters. First, you will hear from Ekaterina Rousseva, who

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will tell you about when the state violates the competition rules of the European Union. Then you will hear from Isabelle Neale-Besson, who will talk about the link with state aids and the link of that to competitive neutrality. Then you will hear from Skaīdrite Abrama, who is the chairperson of the Latvian Competition Council. And she will tell you the lay of the land in Latvia and Lithuania, two nations that are both, of course, part of the European Union. They apply the European Union law, but in particular, as she will tell you, Lithuania has a particularly strong national law, totally compatible with EU law, that is intended, on its face, to cover state, as well as local restraints.

Ekaterina and Isabelle will tell you principally about rules of law. Skaīdrite will tell you also about the strategic interactions between law enforcement and advocacy in these two countries in which state and local restraints are dominantly strangling competition.

Thank you, and over to you, Ekaterina.

[Slide 10: When Does the State Infringe?]

EKATERINA ROUSSEVA: Hello, my name is Ekaterina Rousseva. I am a policy analyst and case coordinator at the Directorate General for Competition at the European Commission. In my presentation, I will try to explain when the states, members of the European Union, may be held liable for infringing the EU competition rules.

[Slide 11: How Can States Affect Competition in the Market?]

EKATERINA ROUSSEVA: Maintaining effective competition in the market is a core value of the European Union. Both private economic operators and the states, members of the European Union, can be held responsible for taking actions that distort competition. The states of the European Union may intervene in the market and affect competition in different ways.

First, they may engage in economic activities through state-owned or state-controlled entities that compete in the market against private operators. In such circumstances, the state acts in the market as what we call in the European Union, undertaking. Undertaking is any entity that engages in

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economic activity regardless of the legal status of the entity and the way in which it is financed. All undertakings, privately or state-owned, are subject to the EU competition rules that prohibit anticompetitive agreements, decisions of associations, concerted practices, and unilateral abuse of behavior by undertakings holding a dominant position.

Secondly, the states may affect competition also when they act as authorities exercising public power. This is the case where the states' legislative, administrative or regulatory bodies adopt measures that affect competition. In the rest of my talk, I will focus on the second scenario in which the state intervenes in the market as an authority exercising public power.

In the European Union, member states have a general and specific obligation not to adopt measures that distort competition. I will try first to explain the scope of the general duty and then the scope of the specific duty.

[Slide 12: Member States' General Duty]

EKATERINA ROUSSEVA: A wide range of state measures may affect competition. For example, legislation or administrative acts which impose minimum or maximum prices for goods or services or quality requirements for provision of a service or regulatory requirements which make entry to markets more difficult. However, if all state measures, which may have some impact on competition, were to be prohibited, the ability of member states to intervene in their economies and to pursue different policy objectives to the benefit of their citizens would be greatly reduced. That is why some caution may be needed in defining the conditions for intervention against state measures.

In the European Union, liability for the state may arise if a concrete link between the state measure and an anticompetitive practice or behavior in the market can be established. This is the case where the state requires or favors the adoption of anticompetitive practices by undertakings or reinforces the effect of such practices or delegates its own responsibility to undertakings and thereby deprives its own legislation of its official character.

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In all these circumstances, the state measure renders the competition rules applicable to undertakings ineffective. It deprives the undertakings of the possibility to comply with those rules. If the state measure in question leaves no room for the undertakings to choose their behavior in the market; in other words, the state creates a situation in which the undertakings cannot avoid entering into anticompetitive practices, the state alone is liable for the distortion of competition.

If the state measure only facilitates or enforces anticompetitive practices of undertakings, then both the state and the undertakings may be held liable. The state, however, cannot be held liable if the anticompetitive behavior or practice is the result of an autonomous commercial decision on the part of the undertakings.

Some examples from case law may help illustrate when the state measures aren't compatible with the competition rules and when they do not raise concerns.

[Slide 13: Member States' General Duty: Examples]

EKATERINA ROUSSEVA: In the case, Italy and Commission, Italy had adopted and maintained in force a law which empowered the National Council of Customs Agents to adopt a decision to fix compulsory tariffs for all customs agents. The National Council of Customs Agents was not a governmental body, but instead a body consisting of representatives of professional customs agents, acting in the exclusive interest of the profession. It did not have any public tasks.

The European Code of Justice found that customs agents offer services in the market and perform economic activity. So, they were undertakings in the meaning of the EU competition rules. The decision of their professional body to fix a compulsory tariff was found to be a decision of an association of undertakings liable to restrict competition for customs services. The state was held liable in this case because by adopting the law in question, it delegated its own powers to regulate the sector to a private entity, enabling it to distort competition by fixing tariffs.

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In contrast, in a number of cases in which the final determination of prices or tariffs has been made by a governmental body or an authority pursuing public goals, the state has been held not to be liable for infringing the competition rules. For instance, the Court has held that the EU competition rules do not preclude a member state from adopting a law which approves, on the basis of a draft produced by a professional body of members of the bar, a compulsory tariff fixing the minimum and maximum fees for members of the legal profession.

The rationale in this and other similar cases has been that the state, although taking into account proposals made by professional bodies, has made the ultimate decision itself. It has not delegated its powers to a private entity and has not deprived its legislation of official character.

However, liability for the state may arise also in circumstances in which the state preserves the power to fix selling prices for itself, but in doing so, it requires or facilitates anticompetitive agreements by undertakings. This was the case, for instance, with Italian legislation which regulated the manufacture and sale of mattresses in Italy and thereby facilitated price fixing and market sharing between producers.

In addition to their general obligation not to distort competition, member states of the European Union have a specific duty not to distort competition.

[Slide 14: Member State's Specific Duty]

EKATERINA ROUSSEVA: It is a specific duty to the extent that it precludes member states from adopting measures in respect of three categories of undertakings. First, public undertakings, these are undertakings over which public authorities exercise directly or indirectly a dominant influence. This dominant influence may be exercised by virtue of ownership or financial participation.

The second type of undertakings are those to which the state grants exclusive rights. In other words, these are undertakings which enjoy a monopoly in performing a particular economic activity.

And the third type of undertakings are those to which the state grants special rights. In other words, the state reserves the performance of a particular economic activity to a limited number of undertakings. The second and the third type of undertakings are often referred to as “privileged undertakings”.

The EU rules prohibit member states from adopting any relation to these three categories of undertakings, measures that mandate or induce such undertakings to engage in anticompetitive practices. It should be made clear that the granting of special and exclusive rights restricts competition as the granting of such rights, by definition, limits the number of market operators that can perform the activity.

However, the EU rules do not preclude the mere granting of such rights or the mere creation of public undertakings. Similarly, the mere creation of a dominant position through the grant of exclusive or special rights is not unlawful. However, member states will breach their specific duty not to distort competition if merely by exercising the rights conferred upon them, the public or privileged undertakings elect to abuse the dominant position or to conclude anticompetitive agreements.

It is not always easy to make the distinction between the lawful granting of privileges and the unlawful exercise of those same privileges. This assessment should be made carefully on a case-by-case basis. Cases where the state measure induces one or more public or privileged undertakings to enter anticompetitive agreements have been rather rare. States are more often tempted to favor a single undertaking by conferring a dominant position and creating conditions for an abuse of such a position.

It is difficult to conclusively enumerate or categorize the types of state measures that can make an abuse of a dominant position unavoidable. I will mention a few typical scenarios that have been seen in practice.

[Slide 15: Specific Duty: Examples]

EKATERINA ROUSSEVA: The first scenario pertains to a situation in which the state sets up a

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statutory monopoly in such a way that the undertaking benefitting from the monopoly position is manifestly incapable of meeting demand. The European Court of Justice first assessed such a behavior a case in which Germany had granted a legal monopoly to a public employment agency and that agency failed to meet the demands for particular employment services. The legal monopoly made it impossible for other operators to satisfy that demand. The Court held that while the fact that Germany had granted the legal monopoly did not itself entail a breach of the competition rules, the exercise of the monopoly rights would inevitably lead to an abuse. This reasoning has been applied in a number of cases, including a more recent case in which the Commission found that the amendment to the Slovak postal law reserving the delivery of hybrid mail to the incumbent postal operator was illegal. The Commission found that by preventing private operators from delivering hybrid mail, the state also prevented them from offering some specific additional services for which there was customer demand that the incumbent was not able to satisfy.

The second typical scenario pertains to situations in which a member state entrusts an undertaking active in a competitive market with a regulatory task, and in this way, creates conflict of interest between the undertaking's regulatory mission and its commercial objectives. As a regulator of the marketplace, the undertaking can easily use its regulatory power to inflict competitive disadvantages on competitors. For instance, if an undertaking is given the exclusive right to authorize market operators to provide a particular service, and at the same time, it competes on the market for the services it authorizes, the undertaking would inevitably favor its own services and put its competitors at a disadvantage.

The third typical scenario pertains to a situation in which a state measure may also enable an undertaking to extend its dominant position on the downstream market. This would be the case where the state grants to an undertaking the exclusive right to operate an essential facility or to supply services which are necessary for competition in a downstream market in which the undertaking itself operates.

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For example, an undertaking may be given the exclusive right to operate a port facility while it competes on the market for the ferry services that use the port in question. In such or similar situations, the undertakings are encouraged by the state measure to refuse indispensable access or service to their downstream competitors or to charge competitors unfair prices for those services. The upshot is elimination of competition downstream and the extension of the power of the privileged undertaking to the downstream market.

In the scenarios that I have described, it is not necessary for the abusive conduct of the public or privileged undertaking to have already taken place. The creation of a situation in which such conduct potentially, but inevitably, can occur is sufficient. Until recently, however, it was not clear whether a state could be held liable for inducing an abuse of a dominant position if it was not possible to even identify a potentially abusive conduct.

This was a key question in the Greek Lignite case. In that case, the European Commission found that Greece had violated the EU competition rules because it had maintained a quasi-exclusive right of access to domestic Lignite in favor of the incumbent state-owned electricity provider, that is, in favor of a public undertaking. Given that Lignite was the cheapest source of production of electricity available in Greece, the Commission considered that this favorable access distorted competition and protected the dominant position of the public undertaking on the wholesale electricity market. On appeal, the general court held that the Commission was wrong to make such a finding. According to the general court, the Commission should have identified abusive conduct that the public undertaking was led to, or could have been led to, commit as a result of the state measure.

However, the European Court of Justice later annulled the general court's ruling and considered that it was sufficient to identify a potential or actual anticompetitive consequence liable to result from the state measured issue. The Court held that an anticompetitive consequence can be established where the state measured issue affects the structure of the market by creating unequal conditions of

competition between companies by allowing a public or privileged undertaking to maintain, strengthen or extend its dominant position over another market.

As a result of this ruling, member states can no longer escape liability on the grounds that the state measure does not lead to particular, actual, or potential abusive behavior. What matters for a state liability to arise is whether there is anticompetitive consequence resulting from a state measure.

[Slide 16: Justification for State Measures Restricting Competition]

While state measures restricting competition are, in general, incompatible with the European Union rules, states may need to intervene to regulate sectors of their economies and restrict competition for good reasons. This is the case, for example, when the state has to ensure the provision of a service that citizens need but the market fails to deliver. That is why the European Union rules provide for derogation from the application of the competition rules to states and undertakings when the application of these rules would obstruct the provision of services of general economic interests.

In the European Union, services of general economic interests are economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied if there were no public intervention. Services of general economic interest range from activities such as postal services, energy supply, telecommunications or public transport to social services such as care for the elderly and disabled. And their role is to promote social and territorial cohesion.

The provision of such services is not necessarily profitable or at least not profitable on all segments of the market. In order to ensure that services of general economic interest are provided, the state, therefore, may need to impose an obligation on an undertaking to provide the service in the non-profitable markets or segments of it and, at the same time, grant that undertaking exclusive or special right in another profitable market or segment of it.

The gains from the profitable segment enable the undertaking to offset the loss on the non-profitable part of the market. The special or exclusive rights prevent competitors from cherry-

picking the most profitable parts of the system and ensure that the provider of the services of general economic interests operates in economically acceptable conditions. To give an example, the state may decide to grant exclusive rights to an undertaking to provide nonemergency ambulance service and to ensure that the profits collected on that segment of the market are used by the undertaking to finance emergency ambulance services, which are not profitable, but are needed by citizens. This approach allows the private sector to be involved in the supply in public services which otherwise would have to be financed by the state. It should, however, be emphasized that the restriction of competition rules is allowed only insofar as it is necessary for the provision of services of general economic interest. The derogation from the competition rules is an exception rule and it is interpreted restrictively.

The EU approach to state measures affecting competition seeks to establish equilibrium between, on the one hand, the member states interest in using certain undertakings as instruments for implementing financial tax or social policy, and on the other hand, the interest of ensuring undistorted competition in the European internal market.

[Slide 17: State Restraints]

ISABELLE NEALE-BESSON: Good afternoon. I am Isabelle Neale-Besson. I work at the European Commission, and I am a policy officer.

[Slide 18: How to Ensure a Level Playing Field Between the State and Other Economic Operators?]

ISABELLE NEALE-BESSON: EU law does not make a distinction between state-owned enterprises and privately-owned enterprises. All enterprises are subject to the same competition and state aid rules. It means that the state has a right to act on the market like any other private operator. It can be an investor, a creditor or a vendor. But in order to ensure a level playing field between the state and other economic operators, it must be ascertained that the state is really acting according to market principle, like a private operator would.

[Slide 19: What Would a Commercial Operator Do?]

ISABELLE NEALE-BESSON: The benchmark for this assessment is what a rational commercial operator would do in comparable circumstances. Social and policy consideration are not relevant. For instance, a private investor expects to make a profit and balances expected profitability against risk of its investment.

[Slide 20: What Would a Commercial Operator Do? – 2]

ISABELLE NEALE-BESSON: A vendor will maximize the sale price of its assets. A creditor will agree to forego part of its debt if it expects a higher recovery for this agreement. As an illustration, if a state invests into a company *pari passu* with other private investors, this is a good indication that the state acts according to commercial considerations.

[Slide 21: How to Ensure That the State Does Not Overcompensate a Provider of Services of General Economic Interest?]

ISABELLE NEALE-BESSON: The state can also select an operator to perform certain tasks of services of general economic interest that would not be otherwise provided under the same condition of price quality. But it is necessary to make sure that the state is not overcompensating the supplier of the services of general economic interest. Under EU law, the state is not overcompensating the supplier of services of general economic interest if four so-called Altmark criteria are met.

One, public service obligations are clearly defined by an entrustment act. Two, parameters for compensation of the public service obligations are established in advance in an objective and transparent manner. Three, the compensation only covers the cost and a reasonable profit for the public service obligations. Four, the service provider and the amount of the compensation are determined following a call for tender or by comparison with the costs of a typically well-run undertaking provided with adequate means. This test is not necessary for a small amount of compensation and social services.

[Slide 22: Other Cases: Advantage to an Undertaking Through State Resources]

ISABELLE NEALE-BESSON: In other cases, if the state funds a company and this funding has an impact on the market, this intervention falls within the scope of stated control under EU law. The Commission authorizes the support only if state intervention pursues a policy objective of common interest, state support is necessary to achieve the objective, the funding is proportionate to the objective, and the impact on competition and trade is limited.

[Slide 23: How Latvia and Lithuania Apply the Law Against State Restraints]

SKAĪDRITE ĀBRAMA: Hello, my name is Skaīdrite Abrama. I am a chairperson of Commission Council of Latvia. Today, I would like to explain how we in Latvia and Lithuania apply the competition law against state restraints.

[Slide 24: Competition Policy in Baltic Countries: Latvia and Lithuania]

SKAĪDRITE ĀBRAMA: In the beginning, I want to emphasize that strong and reliable competition policy is an integral part of Baltic economies. During the last quarter century, it has been built and strengthened hand-in-hand with the market economy as such. Today, competition policy applies to all economic sectors and is aligned with the EU and OECD competition rules and best practices. Competition authorities in Latvia and Lithuania are very active both in enforcement and competition advocacy. Three stars in 2015 Global Competition Review's annual ranking clearly implies our institutions have been recognized as one of the best among competition law enforcers in the world. However, if I should point out most problematic area, it would be competition restraints created by state-owned companies and public and administrative bodies, especially local governments.

[Slide 25: Why State Restraints Pose a Significant Problem in Latvia and Lithuania]

SKAĪDRITE ĀBRAMA: Why state restraints pose a significant competition problem in Latvia and Lithuania? It has two structural pre-conditions and one that of a culture.

First pre-condition is the large proportion of public sector in our economies. In Latvia, the turnover of the state-owned enterprises accounts for around 18 percent of annual GDP. That exceeds

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the average of the OECD. Second, some of the state-owned companies maintain a dominant position in the markets, even after liberalization. And third is the harmful tendency of local governments in Latvia and Lithuania to frequently ignore the principles of competitive neutrality.

After the economic crisis of 2008 to 2009, local governments increasingly often established their own companies and it seems that in many cases trust in markets competition and private incentives is just not strong enough. Very often, a misunderstood concept of good governance prevails. Moreover, giving advantages to their own companies is perceived as ensuring appropriate control and taking good care of public interests.

[Slide 26: Why State Restraints Pose a Significant Problem in Latvia and Lithuania-2]

SKAĪDRITE ĀBRAMA: If we speak about the extent to which the competition law in Latvia and Lithuania covers the conduct, there are no exemptions or immunities depending on the owner of the entity, should it be a public or a private person. State-owned enterprises are subject to the competition laws that provides the legal framework to prevent the abuse of a dominant position. And the most common competition law violation carried out by state-owned enterprises has been abuse of the dominant position.

In Latvia, we have scrutinized the actions of state-owned enterprises in many sectors where they are dominant players. Among them are postal services, airport services, power supply, heating, water supply, port services. These state-owned companies we have addressed either through enforcement or through competition advocacy. Nevertheless, still some of them use their power to discriminate clients or to foreclose markets.

I would like to give an example that clearly demonstrates indifference of a state-owned enterprise towards the principles of fair competition. In 2015, the Competition Council of Latvia took a decision against Riga Freeport authority. For more than seven years, the Freeport authority had abused its dominant position in the market of administering the Freeport. It distorted competition in order to

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ensure competitive advantages for its own tugboat enterprise. The Freeport authority created various administrative barriers to exclude competing tugboats. For instance, it delayed contracting and licensing of private tugboat service providers, influenced the choice of ship agents and terminals in its own favor, tied the Freeport's public function of ice-breaking with the commercial tugboat services.

Moreover, this was the third Competition Council's investigation in a row against the Riga Freeport. However, the previous fines had not prevented the Freeport from repeating the abuse of its market power, each time in slightly different form, but with the same aim. Now, after the third finding decision, we concluded an administrative agreement with the Freeport authority and the Freeport agreed to pay a fine in the amount of 600,000 Euros and to cease providing commercial tugboat services. We hope that this was the last time when our intervention was necessary because this market has suffered from competition distortions far too long.

[Slide 27: Competition Law Enforcement Against Public Administrative Bodies]

SKAĪDRITE ĀBRAMA: Indeed, enforcement and sanctioning are powerful tools to deter state-owned companies from distorting competition. Behavior, as described in the Riga Freeport case, is characteristic also to local governments. Both in Latvia and Lithuania, competition often is harmed by municipalities. Many of them avoid to organize public procurements and instead provide special privilege to their own companies. However, possibilities to tackle such cases in Latvia and Lithuania differ substantially. When we speak about the Lithuanian competition law, it prohibits public administrative bodies from adopting legal acts or decisions that grant privileges to or discriminate against any market player. And, as the Lithuanian Competition Council reports, within the last year they have passed more resolutions against decisions adopted by public administrative bodies, mostly local governments, than against actions of private undertakings.

One of the most recently established infringement was carried out by Vilnius City Municipality. You know Vilnius is the capital of Lithuania. The Vilnius City Municipality established its taxi

company in favored that with privilege, including subsidies amounting to at least a half million Euros. In this case, the Lithuanian Competition Council obliged the Vilnius City Municipality to restore the level playing field. Under the Lithuanian competition law, the Competition Authority is entitled to pass resolutions against public administrative bodies.

[Slide 28: Competition Law Enforcement Against Public Administrative Bodies-2]

SKAĪDRITE ĀBRAMA: There are many similar situations in Latvia. However, the competition law of Latvia doesn't provide for enforcement and sanctioning power to prevent or end them. Thus, the only tool we have in Latvia is competition advocacy.

First, we monitor all draft legislation amendments and if competitive neutrality may be affected, we provide our objections to the respective municipality, ministry or to the Parliament. We closely cooperate with other state institutions and NGOs, and we have achieved that our opinion can prevent many possible administrative competition distortions.

As a result of our active advocacy, recently the Parliament rejected tax legislation that would have privileged public over private concert venues. However, there are also failures. For instance, regardless our year's long competition advocacy in the household waste management market, free competition of it is endangered. Local governments that wholly or partly own waste companies can freely choose in-house services instead of organizing public procurements. As a result, private companies are excluded from market in many regions of Latvia.

We see that competition advocacy can help less if there is no enforcement. Hence, the Latvian Competition Council believes that competition law of Latvia should provide for similar enforcement possibilities to tackle not only private companies, but also public administrative bodies. Local governments that ignore competitive neutrality principles jeopardize favorable investment climate, and the bottom line is the damage that is done to consumers and the welfare of society. Unfortunately, for now, our propositions to amend the law in Latvia have not acquired political support, and this means

that we still have to find ways how to prevent local governments from creating unjustified advantages to some while discriminating against other market players.

[Slide 29: Conclusion: Lessons to Take Away]

ELEANOR FOX: I will now conclude our video and suggest some lessons from it. You have seen a kaleidoscope of the kinds of state and local government practices that may be caught by competition laws and you have seen the implementation of those laws. What lessons should you take away?

Let me mention four. First, which I know you know well, is that state and local restraints are a very serious competition problem in many jurisdictions. In many jurisdictions, there is a law -- competition law -- that may reprehend certain state and local restraints and those laws have traction in a number of jurisdictions. Some of those areas are very well-known, very well-accepted like state-owned enterprises acting in commercial areas. Also, quite well-accepted is the competition law discipline against anticompetitive municipal restraints. An emerging field is the catching of anticompetitive restraints in areas that are an abuse of administrative power and certain measures that may be excessively anticompetitive.

As for the latter, in what I'd call the emerging field, this breach of the law is particularly common, where it is found at all, in transitional economies that have a background of state-ism and they're trying to create markets and feel that without a discipline against the state and local restraints, that challenge is a very, very large one.

[Slide 30: Conclusion-2]

ELEANOR FOX: So, number two lesson to be drawn is that the law enforcement tool can be a very important tool in the tool chest, side-by-side the advocacy tool, and nations that have both tools can develop strategies using one or the other, or both, mutually reinforcing.

Number three is that in this area, there must be rules and standards. We have reviewed rules and

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standards of the European Union. Every nation that has such a law must have rules and standards and, of course, you must consult the particular jurisdiction to understand what they are and advocate for them if they are not there.

And lastly, this area of antitrust law enforcement against state and local restraints is a rather under-explored area. There is not much cross-fertilization in this area, even though a number of jurisdictions have laws that do virtually the same thing. So, this video may be the start of cross-fertilization on rules, standards, and strategies in the use of the competition law tool in the fight against excessive state and local restraints.

Thank you.