



COMPETITION NEWSLETTER

Competition Council of Latvia Newsletter

Volume 5 Issue 1 / 28 February 2018

ISSN 2501-031X



In 2018 we will strengthen the Authority, Competition law and Competition culture

The Competition Council (the CC) has developed work priorities of the Authority for 2018. The most important priorities will include promoting understanding of market participants and public persons about free and fair competition, establishment and prevention of the most severe infringements of competition, as well as strengthening of the capacity of the Authority by attracting professional employees.

When highlighting plans of 2018, the Authority will continue active work on the promotion of competition culture in order to achieve bigger support from it for the idea of fair competition by informing and educating consumers, entrepreneurs and unions thereof, public persons, students and pupils. The society, being aware of the principles of competition, may see infringements and adverse circumstances for the competition and protect their rights to fair competition as well as not to permit infringements in their activity.

It is expected that the number of the most severe infringements of the Competition Law, in particular cartel agreements and abuse of dominant position, will not decrease in 2018. In order to prevent market participants from involvement in the infringements of prohibited agreements, it is planned to assess the need to introduce personal responsibility of officials.

In order to proactively establish and prevent the signs of competition limitations, facilitating the development of markets and occurrence of innovations, the CC will continue to supervise the most important industries of the economy.

Taking into account the amendments to the remuneration system of the CC supported by the Saeima (Parliament), as well as in order to strengthen the capacity of the Authority and be able to attract and keep professional employees, the CC will continue the commenced work on the development of the new and motivating remuneration system.

In 2018 the CC will take an active part also in the international environment, promoting the international visibility of Latvia, popularising the experience of the Authority and strengthening the capability of investigation.

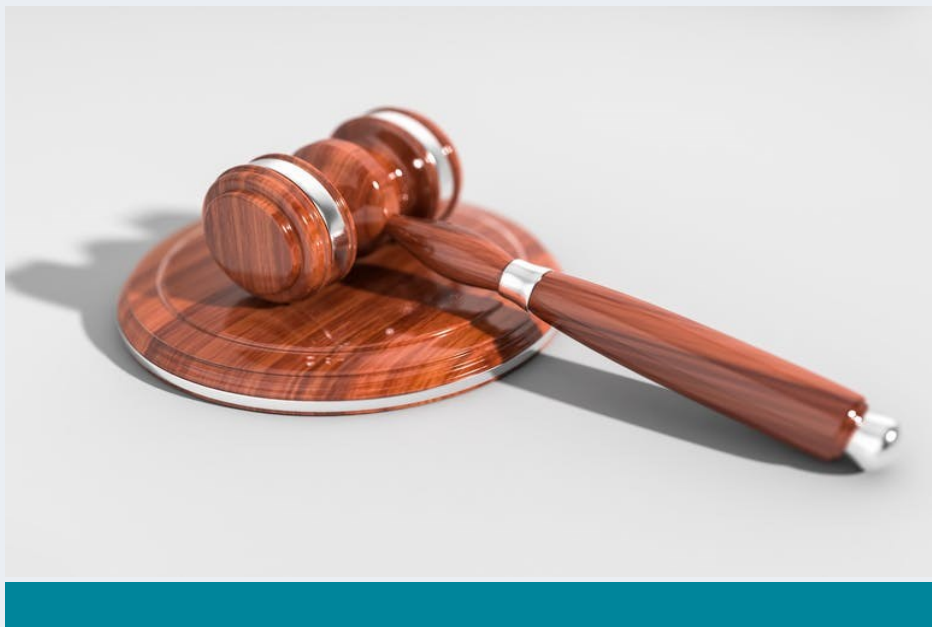
Latvian Parliament approves the changes of remuneration system of the Competition Council

At the end of the last year, Saeima (Latvian Parliament) approved amendments, which determine changes to the remuneration system of the Competition Council, aligning the system to the procedures implemented by other equivalent market regulatory authorities.

The developed proposals stipulate, that henceforward monthly salary of employees of the Competition Council will be determined according to the procedures established by the institution, considering the position value (level of responsibility and complexity), assessment of individual qualification and competences, as well as the amount of average monthly salary.

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The Constitutional Court recognizes the exclusive rights of the CC to decide on the amount of a fine

The judgement adopted by the Constitutional Court on 22 December 2017 recognizes the current degree of administrative court review regarding fines imposed by the Competition Council of Latvia as compatible to the Satversme (the Constitution) and rights to fair trial. It means that also in the future when reviewing a fining decision by the Competition Council the court will not be able to change the amount of the fine by setting the fine itself or increasing it.

The case was initiated by the Constitutional Court based on two applications by the Administrative Regional Court contesting the legal provision stating that in cases provided only by law a court may amend an administrative act and determine specific content thereof. The applicant held that neither Competition law or any other legal provision of competition law directly provides for the rights of administrative court to amend the decision adopted by the Competition Council. Therefore the contested provision restricts the jurisdiction of the administrative court and prohibits from ensuring a person's right to fair trial.

The Constitutional Court, upon evaluating the compliance of the contested provision with the Constitution, referred to the principle of separation of powers between the executive power and judicial power. According to this principle the initiation of the administrative case and issuing the administrative act or decision shall be under the competence of the Competition Council, whereas decision on the legality of the act shall be under the competence of a court.

Besides, the court also emphasized that the use of discretionary powers is more suitable in administrative proceeding by the authority rather than in administrative proceedings of a court. Namely, the authority may obtain more information and consider broader context rather than a court in order to apply the necessary legal obligations and a fine appropriate for the established factual circumstances. Also the case law of the European Court of Human Rights states that the decisions by authorities shall be respected as the decision-making process often requires a measure of professional knowledge or experience and the exercise of administrative discretion pursuant to wider policy aims.

At the same time the Constitutional Court indicates that, in accordance with the European Convention of Human Rights, it is not the role of the Convention to give access to a level of jurisdiction which can substitute its opinion for that of the administrative authorities. In the particular case it means that a court doesn't necessarily need a jurisdiction in competition cases to set the fine itself or increase it for such a court review to be compatible with the Constitution or the rights to fair trial. Court shall have the right to decide on the key issues of the dispute and, if necessary, to forward the case for reassessment to the same or other authority.

Injured parties finally have a facilitated possibility to claim for compensation for damages

On 5 October 2017, during the final reading the Saeima adopted the amendments to the Competition Law regarding compensation of damages. Amendments provide that further on consumers, companies and other involved parties will have a simplified and more efficient possibility to claim damages from infringers of competition law.

Amendments to the Competition Law regarding damage claim specify the scope of several definitions covered by the law, such as cartel agreements and leniency programme. It enables to effectively take over the provisions of Directive 2014/104/EU of the European Parliament and of the Council 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.

Amendments simplify estimation of the amount of damage claim. The Law maintains also further the presumption that a cartel agreement causes a harm, as a result of which the price is increased by 10%, unless it has been proved otherwise.

Besides, the adopted amendments to the Competition Law provide that further on the claims for compensation of damages, as well as infringements of competition law, including infringements of a prohibition of unfair competition, will be adjudicated on the basis of special jurisdiction – by the Latgale Suburb Court of the City of Riga.

Amendments to the Competition Law will come into legal force on 1 November 2017.



Mr Māris Spička, the Executive Director of the Competition Council: "The judgement of the Constitutional Court and considerations set forth in there are significant for further work of the Competition Council. Upon confirming that the Competition Council is the only authority entitled to decide on the appropriate amount of a fine in case of infringement of competition law, is a significant step for united, balanced and effective competition policy."



It is never too late to confess involvement in a cartel—the leniency programme!

Participation in bid-rigging is the most severe infringement of the Competition Law; therefore a fine for this infringement can reach up to 10% of the company turnover in the previous financial year, and also participation in public procurements is prohibited for one year.

The leniency programme is a possibility for a company, which is or has been involved in bid-rigging, to voluntarily submit evidence on the relevant infringement to the CC and obtain full exemption from the fine and the prohibition to participate in public procurements.

How the programme works?

1. A company shall first submit a written application to the CC upon its own initiative
2. At the moment of submission of the application the CC has not sufficient evidence to be able to initiate an investigation case or to detect an infringement
3. The information and evidence provided by the company in relation to the infringement is sufficient to initiate an investigation case or to detect an infringement
4. After submission of application, the company has immediately terminated participation in bid-rigging, unless the CC has determined otherwise
5. The company provides all available evidence, related to relevant bid-rigging, and has not destroyed, falsified or concealed such evidence before submission of application
6. The company has not revealed the fact of cooperation with the CC neither to participations of bid-rigging, nor to other persons
7. The company has not been the initiator of respective bid-rigging and has not implemented any activities to force other companies to participate in bid-rigging



Organizers of public procurements can spot bid-rigging features

The Competition Council draws attention to the possibilities of procurement organizers to be the first to spot suspicious coincidences in tenders of applicants, which may indicate to possible prohibited agreements of companies. In such cases it is significant for procurement organizers not to be indifferent and report about such suspicious coincidences to the Competition Council.

Within the last five years, the Competition Council has adopted 20 decisions, detecting bid-rigging or prohibited agreements among applicants of procurements. As a result, bid-rigging in procurements is the most frequently detected and, at the same time, one of the most severe infringements of competition law, which is often compared to theft from the public.

The role of procurement organizers in prevention of such infringements of competition law is extremely significant, because exactly these persons can be the first to detect suspicious coincidences in tenders submitted by applicants. If procurement organizers have suspicions concerning prohibited agreements of applicants, they shall inform the Competition Council, continuing the procurement procedure and without disclosing this information to applicants.

The Competition Council draws attention to the fact, that in the last year the European Council changed the conditions on financial corrections for infringements, including prohibited agreements, within the projects of the European Union funds; therefore, involvement of procurement organizers in identifying these agreements is particularly important – if the customer reports to the Competition Council and thus helps detecting an infringement, there is a possibility of reduction or non-application of financial correction.

Whereas in cases, where customers have suffered loss as a result of prohibited agreements of companies, the Competition Council calls to claim compensation of incurred loss. At the end of the last year, amendments to the Competition Law and the Civil Procedure Law came into effect, establishing a facilitated mechanism for proving such loss, so that the suffered parties can address the court and claim from infringers compensation of loss incurred as a result of the prohibited agreement.

CROSS COUNTRY SEMINARS “FAIR ENTREPRENEURSHIP”

Educational seminars for entrepreneurs and procurement specialists 2017. /2018.

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Liepāja Ventspils Jelgava
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Kuldīga





Higher education institutions also can be involved in prohibited agreements

At the end of the last year, the Competition Council warned two Latvian higher education institutions – Latvia University of Agriculture and SIA “RISEBA University” – for possible proposal for coordination of tenders in the procurement organised by the State Education Development Agency. After receiving the warning, both higher education institutions expressed their commitment to observe conditions of the competition law compliance programme to prevent recurrence of similar activities in the future.

In August 2017, the Competition Council received an application of the Central Finance and Contracting Agency, where the Agency indicated to suspicions about a prohibited agreement, which was concluded between both said higher education institutions in the framework of public procurement on implementation of various career development support measures, organised by the State Education Development Agency in 2017. After in-depth examination of the information, the Competition Council detected alleged features, that Latvia University of Agriculture and SIA “RISEBA University” may have coordinated their tenders in the relevant procurement.

Having considered all factual circumstances and taking into account the institution prioritisation strategy, the Competition Council decided in this case, that imposing of prevention procedure is the most efficient method for resolving this situation, i.e., the Competition Council decided to warn both institutions. During the prevention period, representatives of the Competition Council met with representatives of both higher education institutions, informing them about compliance with basic principles of fair competition. In the conclusion of the preventive measure, the representatives signed a certification prepared by the Competition Council, thereby confirming their awareness of consequences of the infringement and expressing their commitment to prevent recurrence of similar situations.

The Competition Council reminds, that prohibited agreements, incl. on participation in procurements, is one of the most severe infringements of competition law, which is subject to imposing a fine up to 10% of the company turnover in the previous year. Whereas in the cases, when the alleged infringement is insignificant, is not recurrent and the company is committed not to repeat such infringement, and where the resources of the CC, required for investigation of infringement, may exceed the public benefit, the Company Council may decide on warning the company, without imposing a fine.

The Competition Council reminds to VAS “Latvijas pasts” about its responsibility towards other competitors

At the end of 2017, the Competition Council concluded the negotiation procedure with VAS “Latvijas pasts”, which has a dominant position on separate markets of postal services, about its special responsibility towards its customers and competitors to prevent risks of recurrent infringements of the Competition Law in the future.

The Competition Council received an application of AS “Fitek”, which performs preparation of parcels and ensures delivery of parcels to addressees in cooperation with providers of delivery services. The company drew attention of the authority to alleged abuse of dominant position by VAS “Latvijas pasts”, setting groundless cooperation conditions within the tender on preparation of cancer screening letters and their distribution to residents, organised by the National Health Service.

Having examined the circumstances indicated in the application, the Competition Council did not detect sufficient evidence, which would confirm imposing of unfair conditions. However, considering the market power of VAS “Latvijas pasts” and the fact, that the Competition Council has already adopted two decisions concerning infringements of the company, and that during the probation period the authority detected certain deficiencies related to competition law in the communication of the company employees with AS “Fitek”, the Competition Council conducted warning negotiations with VAS “Latvijas pasts”.





Non-conformities to fair practice are still observed in the cooperation of retailers and suppliers

After completing the market surveillance process, the Competition Council concludes, that the Unfair Retail Trade Practices Prohibition Law (URTPPL) has facilitated cooperation of retailers and suppliers within the first years of its application.

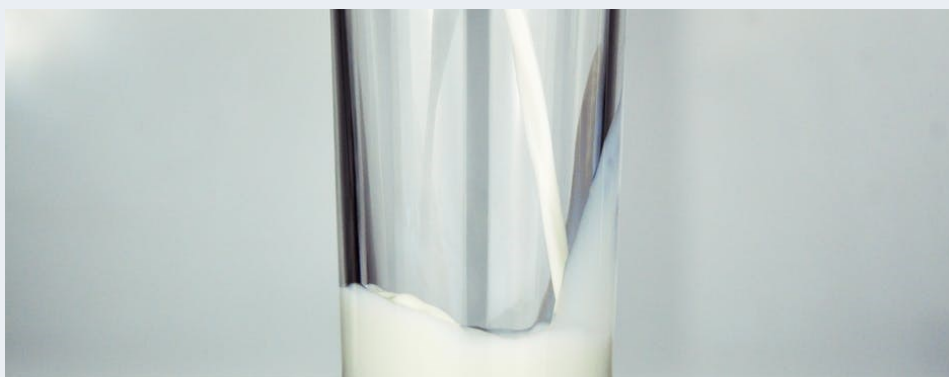
Since the Competition Council has detected separate non-conformities to fair trade practice during the period of application of this law, which have been resolved and also new non-conformities have occurred, the authority has updated the guidelines for application of URTPPL.

In these guidelines the Competition Council specified the law application norms, where most significant additions are associated with additional arrangement of goods, compensation of profit loss, imposing of sanctions and application of discounts.

The URTPPL came into effect on 1 January 2016.



**Help to detect an infringement!
Report without revealing your identity!**



The CC: milk processing in Latvia has low efficiency

In order to discuss the situation on the market due to the rapid decrease of procurement prices of raw milk, the Competition Council met with the representatives of the dairy industry - cooperatives, processors and retailers - on 22 January 2018. Although participants of the meeting showed different opinion about the current situation in the dairy market, it is to be established that the procurement prices of raw milk are affected by a set of many factors of the local and global market. Besides, adverse changes in demand and prices have a trend to become even more frequent.

During the meeting, it was discovered that there is a low trust between the companies, operating in each of the stages of milk product supply chain, and during the periods, when rapid changes in procurement prices of raw milk take place, cooperation terms between certain producers and processors may be ignored. Besides, it was also concluded that the dynamics of price changes for milk products in Latvia is slow, namely, when prices of raw materials fall down, they are reflected in the price of the end product only within a long period of time.

The representative of the Latvian Food Retailers Association confirmed that the drop down of prices of raw milk currently still has not been reflected in the lower procurement price received from milk processors and thus the decreased price in stores. In its turn, the representative of the Central Union of Latvian Milk Manufacturers indicated that insufficient income from export of dairy products and drop down of the domestic consumption for dairy products does not provide a possibility to establish the profitable milk processing. Therefore it should be concluded that the production capacities of processors are not fully used. At the same time frequent promotions for dairy products in hypermarkets confirm that milk processors still deliver to buyers the advantages from price decreased in the form of regular promotions.

Taking into account the issues discussed during the meeting, the CC concludes that the dairy industry was and still is characterized by cyclicity. Although the processors call the current price decrease of raw milk as price fluctuations, however it is clear that raw milk producers will not be protected from them also in the future, because it is caused by a set of several factors: the demand and situation of raw materials and dairy products, including industrial milk powder, on the foreign markets, as well as specifics of the local dairy industry - at first significant overproduction of raw product and fragmentation of farms, low efficiency raw milk processing and lack of export markets. It is to be established that milk processors, specialising in the production of niche products, better overcome the crisis situations and there are currently also a number of companies - both, the raw milk producers as well as processors related with them, who have not been affected by fluctuations of milk prices and having a big demand in retail, even regardless of availability of more cheaper products of other countries.

At the same time the participants of the meeting agreed that counterparties - raw milk producers and processors - should be correct in mutual relations, should warn on changes of the procurement prices or volumes in a timely manner, providing a possibility for partners to get prepared for such changes timely. The Latvian Association of Agricultural Cooperatives and Central Union of Latvian Milk Manufacturers confirmed their readiness to address solving of the problem.



Time capsule message for the 25th anniversary "Competition contributes to progress"

The time capsule is a message not only about the competition surveillance stages implemented during these 25 years, but also a message for subsequent years. The message, which is based on the awareness, that competition contributes to progress and it is a value, which we want to strengthen also in the future.

Fair competition undoubtedly motivates, challenges and propels to better results both at individual and collective level. This is the illustrative idea of the time capsule – when competition grows, development is achieved both by the runner and the sports competition in general.

When competition intensifies and becomes stronger, we become stronger and more athletic.

The Competition Council celebrates 25th Anniversary of Promotion of Fair Competition in Latvia

On 16 November 2017, during the anniversary conference on promotion of fair competition "Towards fair competition: past, present, tomorrow" former and the current chairpersons of the Competition Council, representatives of the state and local governments as well as entrepreneurs discussed the achievements of application of the competition law over passed during 25 years and future challenges of the entrepreneurship.

In 2017, 25 years have passed since the legal competition framework takes care for environment of fair competition in Latvia, and especially established authority is supervising the compliance with it. In order to look back on the obstacles overcome during these years, upon the change of market economics and following the principles of fair competition, the Competition Council of Latvia organised the anniversary conference, inviting the representatives of state and local governments, entrepreneurs, foreign cooperation partners and other persons involved in the application of law.

The introductory speech during the anniversary conference on the meaning of competition law for the Latvian economics and public in general was made by the Prime Minister Māris Kučinskis and the Deputy Prime Minister, the Minister of Economics Arvils Ašeradens, as well as the Chairwoman of the Competition Council Skaidrīte Ābrama. While Michal S. Gal, one of the most recognized experts in the competition law and economics, honoured with the introductory presentation about the development of competition in small economies and new market models developed by companies on the digital environment, influence thereof to consumers in the future.



A musical performance of employees of the Competition Council in the spirit of the 25th anniversary, performing the song "Mums paveiksies" ("We shall succeed") by Jānis Stibelis



**Essay contest for
secondary school
pupils and students
"Progress starts where
there is competition"**

An essay contest for students and pupils on theme: "Progress begins with competition". The essay contest was organised by the Competition Council within the celebration of 25th anniversary of promotion of fair competition in Latvia.

In their essays, secondary school pupils and students provided their vision about the significance of competition in their own daily development and in the overall development of the country.

"When one sees a competitor, he is more motivated to become greater than them, to be completely involved, to think deeper, challenge himself." – Anastasija, Ilūkste Commonwealth Secondary School

"Progress and competition are friends proudly passing on the same path. If we will look closer, we will notice that they are walking hand in hand." – Ispirs, Riga 40th Secondary School

"Development is impossible if it is prohibited to compete fairly. In modern state, everyone has an ability to prove himself or herself. The more competitors have the ability to compete, the better we will live. Competition is vitally important for the progress, but fair competition is even more important!" – Jana, Business High school Turība

"Interesting that word "competitors" is often defined with a negative meaning. I believe that competition should not be taken as an offence or hateful behaviour, it is more like a healthy competition, without which person could not exist." – Roberts, Bauska State Gymnasium.



Time capsule. Title: "Competition Contributes to Progress". Author: Roberts Rūrāns.

The conference was held in three panel discussions, the first out of which was dedicated to the competition authority, therefore all former leaders of the authority and current Chairwoman Skaidrīte Ābrama took part in it. The role of the moderator of the discussion was entrusted to the academician Dr. econ. Raita Karnīte. Taking into account the fact that the competition authority, the competition law and culture as well as the environment of economics have rapidly changed during 25 years, the participants of the discussion introduced the audience with characteristics of each period of time and the challenges over passed. Special emphasis was made to the reputation of the authority and the meaning of employees thereof in the achievements made.

The second panel discussion, which was lead by the Member of the European Parliament, Dr. oec. Roberts Zīle, was dedicated to the compliance of the current regulation of the industry and activities of public persons with the principles of fair competition in the industries significant for society, including in health care, agriculture and regional development. Representatives of ministries met during the discussion and provided their opinion regarding interaction of the competition law with the development of industries represented by them.

During the final panel discussion, the duties of moderator of which were undertaken by the Associate Professor of Stockholm School of Economics in Riga, Dr. Arnis Sauka, entrepreneurs and the Chairman of the Public Utilities Commission Rolands Irklis met. Participants of the discussion shared their visions about changes in the traditional forms of economics, future possibilities for entrepreneurship development, meaning of regulatory enactment and neutral activities of public persons for promotion of development of competition.

Participants of the conference remarked the achievements of the competition authority during this period of time, highlighting in particular both, the achievements of the authority itself as well as significant importance of support provided by entrepreneurs during this period of time for development of competition legislation, public education and protection of competition culture. Besides, the participants emphasized challenges in the future, establishing environment of fair competition for business and consumers as well as understanding of the state, local governments and public persons on the environment of fair competition.

Meanwhile the Competition Council received guests – colleagues of the competition authorities of Ukraine, Moldova, Georgia and Armenia – in order to discuss the common competition challenges and further cooperation opportunities for delivering the good practices of application of competition law in the future.

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#FairEntrepreneurship #FairCompetition #CrossCountrySeminars

Also in 2018 the CC, CPCB and PMB will educate procurement organizers and applicants about types of infringements and imposed responsibility

In order to provide knowledge necessary for efficient operation of the state and municipalities, and for fair growth of entrepreneurship and safe operation on the market, the Competition Council collectively with the Corruption Prevention and Combating Bureau and the Procurement Monitoring Bureau will continue education of public procurement organizers and applicants about the types of infringements and imposed responsibility also in 2018.

The objective of seminars “On fair entrepreneurship”, which were started in 2017, is to educate two target groups – representatives of public and municipal authorities, whose daily work is related to the procurement area, and entrepreneurs. The Competition Council in cooperation with the CPCB and the PMB will allow organizers of public and municipal procurements to raise their knowledge about the procurement area, thereby promoting their operational efficiency.

Whereas entrepreneurs will have a chance to expand their knowledge about their rights in order to be able to successfully use the cooperation opportunities allowed by the law, to defend their interests, if the law is violated by another company, and to avoid law infringements due to lack of knowledge.

During the seminar, experts of the CC, CPCB and CMB will discuss the following topics:

- Bid-rigging features or risks in public procurements;
- Competition law for fair entrepreneurship;
- Aspects of fair competition in public procurement procedures;
- Forms of manifestation and risks of corruption in procurement procedures.

In 2018, seminars are planned in

Jūrmalā Rīgā Kuldīgā
Jēkabpilī Ventspilī Rēzeknē Valmierā

The Newsletter
“Konkurence Tuvplānā”
is published twice a
year by the Competition
Council of Latvia



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To get involved

In order to make the newsletter according to your interests and needs, we invite you to suggest topics about which you would like to read in any of the next newsletter issues.

We also call you to apply for receiving the electronic version of the newsletter by completing an application on the homepage of the CC.

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