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**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

**English - Or. English**

## **Annual Report on Competition Policy Developments in Estonia**

**21-23 June 2017**

*This report is submitted by Estonia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.*

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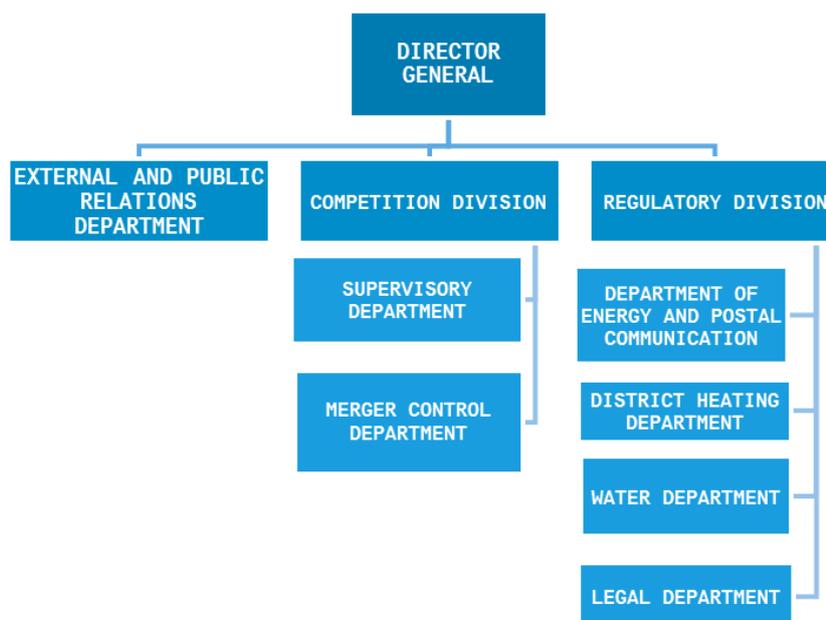
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## 1. About the Competition Authority

1. The Estonian Competition Authority exercises supervision in the fields of competition, electricity, natural gas, district heating, postal services, public water supply and sewerage and railways. In addition, the Authority settles disputes regarding airport fees. The Competition Authority is in the area of government of the Ministry of Justice.

2. The functions of the Authority are divided between two divisions. The **Competition Division** exercises competition related supervision, control of concentration in all economic sectors, analyses the competitive situation and raises competition related awareness. The **Regulatory Division** implements price regulation and market supervision in the markets of electricity, natural gas, district heating, water, railways and postal services. The **External and Public Relations Department** is responsible for ensuring effective support services of the Authority (including international and public relations, personnel work and training coordination, document management).

**Figure 1. Structure of the Estonian Competition Authority**



3. The Competition Authority employed 46 people as of the end of the year 2016, and 42 people were civil servants and 4 people were employees. The Authority employed 30% of men and 70% of women. The average age of a staff member was 43 years and the average years of service at the Authority was 11.7 years.

4. Most staff members have higher education in economics (business administration, business management, finance, etc.) or law. In addition, there are officials with higher education in other disciplines such as thermal engineering, public administration, chemistry or other.

## 2. Co-operation

5. The Authority considers both international as well as national cooperation highly important. The Authority routinely participates in the work of different field-based working groups, networks and organisations.

6. Competition agencies and sector regulators in various countries share knowledge and experience in the form of bilateral cooperation, but most of the international cooperation is achieved via respective cooperation networks and organisations.

7. The European Commission's Directorate General for Competition and the national competition authorities in all EU Member States cooperate with each other through the **European Competition Network**. As all the members of the network apply the European competition rules, it is necessary for the competition authorities to pool their experiences and share best practices in order to ensure the effective and consistent application of these rules.

8. **European Competition Authorities** is a forum of discussion for the competition authorities in the EU Member States, European Commission and the EFTA States to discuss competition related problems and share experiences.

9. **OECD Competition Committee** is a committee of the Organisation for Economic Cooperation and Development, focusing on competition issues in the area that includes all 35 members of the organisation.

10. **International Competition Network** is a global network with members from every region in the world ranging from small agencies to large ones with different resources and capabilities. The network is an informal venue and it is mostly addressed to maintain contacts and create convergence towards sound competition policy principles and application thereof.

11. The Competition Authority hosted the **Regional Competition Conference** in Viljandi on May 26-25. The core value of the annual meeting between representatives from the Baltic Competition Authorities is sharing knowhow between case handles. This year the participants also discussed the role of competition agencies in promoting and ensuring free competition. In addition to Latvian and Lithuanian competition authorities, colleagues from Finland also actively participated in the event.

12. The Authority has contributed to cooperation and foreign aid projects whenever possible in terms of human resources. Previously the Authority has been engaged in staff training of Moldovan competition officials. In 2016 a development cooperation project funded by the Ministry of Foreign Affairs and managed by Tallinn Law School was started. In the framework of the project, the experts from the Estonian Competition Authority visited Georgia on November 21-24. One of the aims of the Project "Digital Single Market as a Key element in EU-oriented Georgian Higher Education" is developing cooperation, exchanging knowhow and experiences between Georgian and Estonian Competition Authorities.

13. Just as important as international cooperation is developing cooperation on a national level with both public sector authorities and undertakings or unions thereof. In 2016, the Competition Authority concluded a cooperation agreement with the Environmental Investment Centre.

14. The Authority meets its cooperation partners and undertakings a little more casually at an annual conference "Konkurentsipäev". "Konkurentsipäev 2016" took place

on December 14 in Tallinn. The conference traditionally brought together undertakings, experts from various sectors of the economy and cooperation partners from the public sector. The main areas of focus were energy, aviation, IT-sector, trade, and breweries. Conference aims at hearing out undertakings both small and large that share similar values as the Competition Authority and emphasise the importance of free competition.

### 3. Competition Supervision

15. The competition supervisory activities are generally divided in two major parts: solving cases related to competition restricting agreements and conducting proceedings related to the activities of undertakings in a market dominant position. For the Authority, that means conducting criminal, misdemeanour or administrative proceedings. In addition, the Authority analyses the competitive situation in different economic sectors and if necessary makes proposals to respective ministries to improve the competitive situation.

#### 3.1. The obligation proposed by AS Tallink Grupp in relation to the sales options for online agents

16. The Competition Authority investigated the compliance with the competition act of the operations of AS Tallink Grupp based on the complaint of a travel undertaking Boarding Pass OÜ. According to the complaint, AS Tallink Grupp had terminated the Public API Torpedo connection necessary for selling tickets with the applicant and refused to revalidate the agency contract regarding the reselling of vessel tickets operated by AS Tallink Grupp via the online environment of Boarding Pass OÜ.

17. The Authority concluded in the preliminary position that AS Tallink Grupp may have had infringed the competition act, because the online agents had not been given sufficient opportunities to sell the tickets. In the course of the proceedings, the Authority also requested information from other ferry line operators in Estonia about purchasing vessel ticket reselling services from travel agents and concluded that AS Tallink Grupp has a dominant position in the market of purchasing vessel ticket reselling services from travel agents. An undertaking with a market dominant position must follow the restrictions set in the Competition Act.

18. Following the preliminary position of the Authority AS Tallink Grupp submitted a proposal of obligation. According to the Competition Act, the assumed obligation has to be addressed at resolving the competition issues and ending anticompetitive effects of the infringement.

19. On 3 June 2016, the Authority approved the obligation proposed by AS Tallink Grupp, according to which online agents wishing to intermedate Tallink Grupp tickets or other services are provided with a possibility to interface its online sales system with the ticket booking and sales system of AS Tallink Grupp. This will create the opportunity for the clients of the online agent to purchase the services of AS Tallink Grupp within the agent's online sales environment. Furthermore, AS Tallink Grupp has the obligation to hold negotiations in good faith, to enable all the travel undertakings that meet certain requirements and are addressing AS Tallink Grupp on their initiative to use the online brokerage solution. When an agreement with an online agent is reached, AS Tallink Grupp assumes the obligation to carry out the required development and interfacing works, etc.

20. Online agents wishing to intermediate the services of AS Tallink Grupp and interface their online sales system with the ticket booking and sales system of AS Tallink Grupp have to turn to AS Tallink Grupp.

21. The Estonian Competition Authority holds the position that the obligation taken will efficiently resolve the competition issues the authority alluded to in the course of the proceedings.

### **3.2. Precept of the Competition Authority for MTÜ Lääne-Viru Jäätmekekeskus to end abuse of a market dominant position**

22. Estonian Waste Management Association has asked the Competition Authority to check whether a price increase of organised waste collection in Vinni municipality is cost-based, and whether MTÜ Lääne-Viru Jäätmekekeskus has abused its dominant position. To verify the circumstances, the Competition Authority carried out supervision proceedings.

23. MTÜ Lääne-Viru Jäätmekekeskus is an undertaking, established by various local governments, organising waste management on the territories of these local governments. In essence, it intermediates the services of waste handlers and carriers to consumers, and adds a mark-up to the service charges for keeping a record of waste holders and intermediating payments. MTÜ Lääne-Viru Jäätmekekeskus has a dominant market position in Sõmeru rural municipality, Vinni rural municipality and Rakvere city, being the only provider of the respective service in these local government units. The price of a service established by an undertaking in a dominant position should correspond to the economic value of the service, including the price must be cost-based and may include a reasonable profit.

24. The Authority analysed the prices of emptying the containers of mixed municipal waste and removal of the waste in these municipalities, and found that, compared to other undertakings providing equivalent services, the mark-up is significantly higher. Thus, in the price lists established in Vinni rural municipality, Rakvere city and Sõmeru rural municipality MTÜ Lääne-Viru Jäätmekekeskus, as an undertaking in a dominant position, has imposed unfairly high prices, and the undertaking is required to bring the prices in line with the law. If the same service would be provided in a competitive situation, the prices would be expected to be lower because competing operators would not be able to charge fees that exceed the actual costs by several-fold. The service of keeping a record of waste holders and intermediating their payments is, in terms of costs, equivalent to private undertakings' customer relationship management, therefore the Authority used the customer relationship management cost of other waste handlers operating in Estonia as the basis for its calculation (the proportion thereof in the total charges collected from final consumers is around 8%). In terms of profit, the Authority compared the profits of other undertakings operating in the same field. Taking waste collection into account as an area of activity (operating profit margin of 7% on average), which, compared to intermediation, is open to the competition risk, the profitability of MTÜ Lääne-Viru Jäätmekekeskus should certainly not be higher. Considering the share of the three main waste handlers' customer relationship management costs in their total costs, which amounts to approximately 8%, and adding the average operating profit margin of an undertaking engaged in waste collection, which is 7% according to Statistics Estonia, the mark-up of MTÜ Lääne-Viru Jäätmekekeskus must not exceed 15%.

25. For elimination of the violation of the Competition Act, the Competition Authority issued a precept to MTÜ Lääne-Viru Jäätmekeskus on 24.05.2016 for the latter to bring the prices of emptying the containers of mixed municipal waste and removal of the waste into line with the Competition Act. The Authority required the undertaking to lower the mark-up in such a manner that the weighted average mark-up would not exceed 15%. MTÜ Lääne-Viru Jäätmekeskus contested the precept of the Competition Authority in court, and in connection with the absence of a final judgement, the precept has not entered into force for the current moment.

### 3.3. Proposal to simplify the swapping of pension funds

26. The Competition Authority submitted a proposition to the Ministry of Finance to alleviate the time limits of swapping the units of pension funds. The Authority had already made similar proposals in 2010 and 2013. According to the proposal, a shareholder could have the option of swapping their pension fund more frequently than before, for example once a month.

27. Since 2011, it has been possible to swap one's pension fund three times per year. After that, the share of people swapping their pension fund has increased significantly.

28. In September 2016 the Minister of Finance presented the new draft Investment Funds Act, which should increase competition between fund managers. According to the proposals, various requirements would be made more flexible, such as reducing the repurchase costs for units. According to the Competition Authority, in such situations there are grounds to ease the time limits for swapping funds even further.

29. According to the Authority, it is complicated for a new service provider to enter the market in a situation where they are effectively able to compete for existing shareholders only a few times per year. While limiting the frequency of swapping has been justified with the need to prevent short-term investments being made by fund managers, it is a clumsy and non-transparent measure that does not explicitly require the pension funds to change their investment policy.

30. To the Authority's knowledge, no such regulatory restriction has been implemented in any of the other economic sectors. The Authority holds the position that free enterprise should only be restricted in the case of clear and analytically sound discretion. Enhancing free competition by easing time limits of swapping of pension funds creates better prerequisites for price competition, including reduction of service fees.

### 3.4. Proposal to open the coach service market to free competition

31. In 2016, the Competition Authority proposed to open up the long-distance bus transport market to free competition and to cancel the restrictions on granting line permits provided by the Public Transport Act wherever there is no reasoned need for such limitations. Historically, the routine of granting line permits for long-distance bus routes in Estonia has in one way or another restricted free competition. In many cases, it is not clear what is the purpose of restricting competition or whether the restriction contributes to the achievement of the goals established.

32. The restrictions, established by the Public Transport Act, on granting line permits are described ambiguously, and they are defined in more detail (including the choice

between an open or a closed market) in the consideration principles prepared and established by the Road Administration

33. Based on the consideration principles, the line permit application must be assessed separately in case the frequency of departures exceeds reasonable intervals. The Competition Authority believes that the reasonable intervals are optimally defined by the relationship between supply and demand. Furthermore, the meaning of this criterion is not clear in a situation where the carriers are able to freely use extra buses whenever necessary. For example, on Tallinn-Tartu and Tartu-Tallinn routes it is common that two buses of the same carrier depart simultaneously under the same line permit during peak hours. Another questionable criterion is the number of stops on the route. This has created a situation where line carriers add as many stops as possible to their routes in order to get a line permit. In doing so, they may not be guided by the interests of passengers, choosing relatively little-used locations on the way instead.

34. For the justification of refusal to issue line permits, there are no compelling reasons that would be based on the protection of public interest. Long-distance bus routes are operated by private companies under market conditions, and the state should not restrict the opening of new routes. It would be reasonable for the state to establish uniform requirements for all carriers, rather than require the new carriers to always offer better or at least equivalent conditions. The current arrangement puts the existing and new carriers in an unfair competitive situation, favouring the carriers, which are already operating on the market. Both existing and new carriers must be able to enter the market and operate under the same conditions.

35. On the major long-distance routes, the carriers enjoy very high market shares and minimum competition, for example, on Tallinn-Tartu and Tallinn-Narva routes the market share of one carrier exceeds 70%.

36. Enabling free competition would result in equal treatment of haulers, as well as in lower ticket prices for the consumers.

37. The Competition Authority has made similar proposals in 2010 and 2012.

#### 4. Control of Concentrations

38. A concentration shall be subject to control by the Competition Authority if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 6 million euros and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded 2 million euros. The main purpose of the control is to avoid creation or strengthening dominant position of an undertaking, which may give rise to a significant impediment to effective competition.

39. In 2016, the Competition Authority conducted 37 concentration related proceedings, 35 concentration notices were submitted in 2016 and two cases were brought over from the previous year. The Authority granted 37 permissions to concentration. In 34 out of 37 cases, the Authority made decisions in the 30 calendar days prescribed in the Competition Act. In three cases (Olympic Casino Eesti/ MC Kasiinod; Circle K Eesti AS/ Premium 7; Eesti Keskkonnateenused AS/OÜ Jaaksoni Linnahooldus) the Authority decided to initiate a supplementary proceeding. Supplementary proceeding is carried out in order to ascertain whether the concentration subject to control does or does not involve anti-competitive circumstances.

40. According to the law, the maximum length of the supplementary proceeding is four months.

41. The breakdown by types of concentrations was as follows:

- An undertaking acquired control of the whole or part of the other undertaking in case of 30 concentrations (Competition Act § 19 (1) p 2);
- Undertakings jointly acquired control of the whole or a part of another undertaking in the case of seven concentrations (Competition Act § 19 (1) p 3).

42. The concentrations took place in the following markets:

- Gambling games
- Real estate
- Hospitals
- Taxi service
- Production and sale of malt
- Insurance
- Electrical goods
- Gas
- Pension funds
- Logistical services
- Motor fuel
- Electricity networks
- Sports goods
- Medical services
- Waste management
- Retail trade of alcohol
- Maritime transport
- Carriage of passengers by bus
- Horticultural products
- Food industry
- Wholesale of IT products
- Building material
- Wholesale of food products
- Telecommunications
- Air transport

43. The majority (25) of the concentrations took place between Estonian undertakings, while in case of four concentrations both parties were foreign undertakings. In eight cases, the concentrations involved both undertakings registered abroad and undertakings registered in Estonia. Compared to the preceding year the number of transactions subject to the Competition Authority's control has increased by 13%.

#### **4.1. Concentration of Casinos**

44. One of the concentrations, which led the Competition Authority to conduct a supplementary proceeding, concerned the gaming realm. In late 2015, OLYMPIC CASINO EESTI AS (Olympic Casino) submitted a concentration notification to the Authority, stating that the company intended to acquire a 100% shareholding in AS MC Kasiinod (MC kasiinod).

45. Olympic Casino operates 20 casinos in Estonia, 16 of which are located in Tallinn, and the company is under a dominant influence of OLYMPIC ENTERTAINMENT GROUP AS. Prior to the concentration, the MC Kasiinod was under a dominant influence of AS Alexela Entertainment. MC Kasiinod is engaged in the organisation of gambling, operating one slot machine hall in Tallinn and three in Tartu, under the Monte Cristo brand.

46. The Authority assessed the impact of the concentration on the slot machine gambling market in Estonia as a whole, separately addressing the narrower geographic areas where the concentration parties' business activities overlap (Tallinn and Tartu).

47. As of January 2016, there are 54 gambling locations in Estonia. Olympic Casino owns 20 gambling locations in Estonia, and MC Kasiinod owns four. Thus, the concentration parties own a total of 44.4% of all the gambling sites. The overall market share of the parties to the concentration in the slot machines gaming service market in 2014 was 67%, and thus it is a horizontally affected market. As of January 2016, there were 34 gambling sites in Tallinn, 16 of which belonged to Olympic Casino and one to MC Kasiinod. Thus, the concentration parties owned 50% of the casinos located in Tallinn. As of January 2016, there were five gambling sites in Tartu, one of which belonged to Olympic Casino and three to MC Kasiinod.

48. There is a horizontal overlap in the concentration parties' activities on slot machine gambling services in Estonia, including in Tallinn and in Tartu. Olympic Casino had the highest turnover as a slot machine gaming service provider already before the concentration, and after the acquisition of the dominant influence over MC Kasiinod, Olympic Casino gained the ownership of four additional gaming locations. Upon assessment of the company's market position, it is important to determine whether the operator can act independently of its competitors, suppliers and buyers to a considerable extent. The Competition Authority assessed whether the addition of four gaming locations to Olympic Casino with the concentration provides the operator with considerable independent market operation possibilities, thereby significantly damaging the competition.

49. The concentration parties' competitors were of the view that the concentration would not affect the competitive situation significantly. The major competitors on the slot machines gambling service market are OÜ Novoloto (trademark Fenikss Casino), AS IMG Kasiinod (trademark Casino GrandPrix) and Best4U OÜ (trademark City Casino). Thus, besides the concentration parties, several other operators are active in Estonia, and after the concentration, consumers are left with the opportunity to choose the gaming location of a competing operator besides Olympic Casino. As the main reasons for the insignificant influence, it was pointed out that the operators do not compete on this market with price, but primarily with the location, attractiveness, selection of games, and general emotional background of the gaming locations. In addition, each gaming hall competes with others in its close proximity, and the various logos of the halls are of no significant importance. Opening of new gaming halls has a much greater impact on the competition.

50. Slot machines, which are an important input in the service, are manufactured and sold by internationally operating companies that are located outside Estonia. The Authority believes that by concentration, Olympic Casino will not achieve such a market position that would allow it to operate independently of the supplier of an important input in the service.

51. The Authority granted permission to the concentration, since it was of the opinion that the concentration will not change the market structure in such a way as to seriously damage competition, and there are no circumstances that would trigger a denial of the concentration.

#### 4.2. Concentrations on the motor fuels retail market

52. In 2016, the trend of mergers continued on the motor fuels retail market. During the year, the Authority received four notices regarding concentrations in the sector. (OÜ Alexela Tanklad and part of Mokter OÜ; Circle K Eesti Public Limited Company and part of SEVENOIL EST OÜ, part of OÜ TOOMEMAA, part of private limited company Heleas and part of private limited company Järvejaam; AS Aqua Marina and part of AS Raktom; AS Aqua Marina and part of AS Mahta Kütus). As already the third concentration was happening in the field in a short period of time, the Authority conducted a more in-depth analysis in the concentration proceeding, whereby Circle K Eesti Public Limited Company acquired a dominant influence over a part of SEVENOIL EST OÜ, a part of OÜ TOOMEMAA, a part of private limited company Heleas and a part of private limited company Järvejaam.

53. The Authority estimates that from the buyer's point of view the geographic area of competing filling stations is normally limited to the territory, near which the buyer regularly commutes. Thus, the assessment of the competition situation on the motor fuels retail market must be subject to definition of the areas which are more localised than the entire territory of Estonia. The more localised areas cover approximately a 10-minute drive radius of the concentration parties' filling stations in the cities, and approximately a 20-minute drive radius in the countryside. The outcomes of the analysis of local markets revealed that as a result of the concentration, none of the territories are facing a situation where the filling stations of the concentration parties are predominant. In all areas, the parties to the concentration have a sufficient number of competitors.

54. In spite of the closed nature of the motor fuels retail market where the market entry and expansion are only possible through the concentration of competitors, and despite of the opposition of some of the competitors, the Authority considers that the concentration will not significantly affect competition. The same can also be said after the proceeding of the last concentration in the year 2016, regarding the acquisition of a dominant influence over AS Mahta Kütus by AS AS Aqua Marina. This means that the concentrations did not result in a significant change in the structure of the motor fuels retail market. Four major competitors and a number of smaller players remained operational on the market.

**Table 1. Number of Filling Stations in 2016**

	Beginning of the year 2016	End of the year 2016
Olerex	79	88
Statoil/Circle K	54	77
Alexela	63	67
Neste	55	55