Annual Report on Competition Policy Developments in Lithuania

-- 2018 --

5-7 June 2019

This report is submitted by Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.
Contents

Lithuania ............................................................................................................................................... 3
Executive Summary ................................................................................................................................. 3

1. Changes to competition laws and policies, proposed or adopted ................................................. 3
   1.1. Summary of new legal provisions of competition law and related legislation .................. 3
       1.1.1. Remuneration of Notaries .................................................................................. 3
   1.2. Other relevant measures, including new guidelines ......................................................... 4
   1.3. Government proposals for new legislation ........................................................................ 4

2. Enforcement of competition laws and policies ........................................................................... 5
   2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions ......................................................... 5
       2.1.1. Pharmaceuticals ........................................................................................................ 5
       2.1.2. Retail trade .............................................................................................................. 5
       2.1.3. Energy .................................................................................................................... 6
       2.1.4. Waste management ............................................................................................... 6
       2.1.5. Construction .......................................................................................................... 6
       2.1.6. Other investigations ............................................................................................... 7
   2.2. Summary of activities of competition authorities ............................................................... 7
   2.3. Summary of activities of courts ......................................................................................... 8
       2.3.1. Description of significant cases, including those with international implications. ..... 9
   2.4. Mergers and acquisitions .................................................................................................. 9
       2.4.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws; ................................................................................. 9
       2.4.2. Summary of significant cases .................................................................................. 10

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies .......................................................... 10

4. Resources of competition authorities ......................................................................................... 12
   4.1. Resources overall (current numbers and change over previous year): ............................ 12
       4.1.1. Annual budget (in your currency and USD): ......................................................... 12
       4.1.2. Number of employees (person-years): ................................................................. 12
   4.2. Human resources (person-years) applied to: ................................................................. 12
       4.3. Period covered by the above information: ................................................................... 13

5. Summaries of or references to new reports and studies on competition policy issues ........... 13
Lithuania

Executive Summary

1. In rating ourselves we look into how successful we were in achieving our strategic goals: maximising consumer welfare, making impactful competition advocacy and becoming a more capable and efficient authority.

2. Starting with consumer welfare, our public commitment is that every euro put into our authority’s budget must bring at least 5 euros direct financial benefit to consumers. Last year we exceeded that commitment by reaching the ratio of 1:7.6. Our cartel investigations in Chamber of Notaries and Driving Schools cases have been two major contributors to that outcome. These cases, just as our refusal to allow the implementation of the RIMI/IKI supermarkets merger, have not just produced numbers, but have also responded to justified concerns of many affected consumers.

3. The highlight of our 2018 advocacy efforts has been completion of the Competition Roadshow – a two-year-long project consisting of a series of seminars on state aid, bid rigging and misleading advertising for 1100 representatives from the public and private sector in 10 different regions of Lithuania. This has increased our visibility beyond the capital and we have become better informed of the regional problems, which will be helpful for our future preventive and enforcement actions.

4. Finally, 2018 was a year that tested our capability of working under pressure on many fronts at the same time. Reviewing a series of complicated mergers, running several large-scale antitrust investigations, dealing with an ever-increasing number of legislative acts requiring competition assessment and adjusting to the reform of civil service – all within a period of 12 months – has stretched our resources to the maximum, but we persevered. While the staff turnover remains a challenge, we have managed to keep the core of our team intact and thus ensure continuity of our investigations. To improve our future operational efficiency and to improve our economic analysis expertise, in 2018 we launched a dedicated unit of economists. We have also started preparations for the transfer of advertising supervisory functions – expected to happen in 2019 – to the consumer protection authority and have been involved in designing the forthcoming amendments to the Law on Competition aimed at the transposition of the EU’s ECN+ directive. Add the potential role for the national competition authorities to play under the revised – and still in the pipeline – EU Unfair Commercial Practices directive, and the year of 2019 promises to be no less exciting that the year before.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

1.1.1. Remuneration of Notaries

5. The Competition Council found that the Lithuanian Chamber of Notaries and members of its Presidium concluded an anti-competitive agreement by setting the amount of notary fees and agreeing upon their calculation procedure. During the investigation the authority also analyzed legal provisions regulating the setting of notary fees. Having
evaluated current legislation and its practical application, the Competition Council sent recommendation to the Government to initiate amendments to the Law on Notaries and eliminate the obligation on the Ministry of Justice to negotiate notary fees with the Lithuanian Chamber of Notaries, a self-government institution which unites all notaries. On 21 November 2018 amendments to the Law of Notaries and the Law on Bailiffs came into force which eliminated the obligation on the Ministry of Justice to negotiate notary fees with the Chamber of Notaries and the Chamber of Bailiffs.

1.2. Other relevant measures, including new guidelines

6. The Competition Council created Guidelines on Unfair Practices of Retailers in order to pay attention of suppliers and retailers having significant market power to the actions which could negatively affect their relationships. What is more, the Competition Council seeks to encourage suppliers whose rights have been potentially restricted by the major retailers to inform the Competition Council about the alleged breaches of the Law on the Prohibition of Unfair Practices of Retailers.

1.3. Government proposals for new legislation

7. Proposals regarding:

- amendments to the Law on Competition regarding additional powers of the Competition Council.
  - First, the draft law foresees fines and periodic penalties for some procedural breaches.
  - Second, it is proposed to align the Lithuanian commitment procedure with that of the European Commission as defined in the regulation 1/2003.
  - Third, the Competition Council would be able to interview not only persons related to suspected undertakings, but also other persons who may be aware of the facts relevant to the investigation.
  - Finally, the Competition Council would be able to impose structural remedies with a view to bring an infringement to an end

- amendment establishing a whistle-blower remuneration program, allowing the Competition Council to remunerate whistleblowers who provide evidence enabling the authority to detect an anti-competitive agreement.

- amendments to the Law on Competition regarding the payment of fines. It is proposed that an undertaking may have its duty to pay the fine suspended during the court proceedings if it provides financial guarantee covering the amount of a fine and interests. If the company opts for a bank guarantee, the payment of the fine will be deferred until the judgment.

- amendments to the Law on Legislative Framework which oblige lawmakers to conduct the assessment of impact on competition of any proposed legislative measures when such impact is possible. The amendments were based on OECD Competition Assessment toolkit and other documents.

- amendments to the law on Advertising. It is proposed that for the infringement of the Law on Advertising a fine of up to 3 per cent of the gross annual turnover in the preceding business year (but not more than 100,000 euros) shall be imposed on
undertakings. For repeated infringement within the period of one year, a fine of up to 6 per cent of the gross annual income in the preceding business year (but not more than 200,000 euros) shall be imposed.

- amendments to the Law on Advertising which establish that the Competition Council will not be responsible for the supervision of the implementation of the requirements regarding the comparative advertising and misleading advertising stipulated in this Law. The Competition Council will not be in charge of the application of the Regulation (EC) No 2006/2004. Those functions will be assigned to the State Consumer Rights Protection Authority;

- amendments to the Law on the Prohibition of Unfair Practices of Retailers regarding new measures to protect suppliers and new functions for the Competition Council.
  
  o First, retailers are prohibited from asking suppliers to provide commercial discounts or pay in any other way if that was not already agreed in writing beforehand.

  o Second, suppliers are protected from retaliation if they apply to the court or to the Competition Council regarding possible infringement of this law by the retailers.

  o Third, the Competition Council will be in charge of monitoring the contracts between retailers and suppliers and other actions by retailers, as well as the application of the guidelines of good practices between retailers and suppliers.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

8. The sectors that have seen a significant intervention on part of the Competition Council are the following:

2.1.1. Pharmaceuticals

9. The Competition Council submitted 3 negative opinions to the Ministry of Health regarding the draft laws proposing to establish the network of state pharmacies. There have also been numerous advocacy efforts with regard to other legislative measures related to the compensation mechanisms for pharmaceuticals and the access to the list of compensatory drugs.

2.1.2. Retail trade

10. The Competition Council decided that one of the major supermarket chains UAB Rimi Lietuva (RIMI) failed to implement merger remedies which the authority approved as a condition when clearing the acquisition of sole control of another major supermarket chain UAB Palink. RIMI undertook to divest part of its retail business to prevent this merger from restricting competition in certain local retail markets, however, on 17 April 2018 the authority decided that the proposed buyers of retail business did not meet the set requirements of the remedies as they would not ensure sustainable and effective
competition in the specified stores in the relevant retail markets, as compared to the pre-merger situation.

2.1.3. Energy

11. The Competition Council closed an investigation into suspected abuse of dominance by Orlen Lietuva. The authority did not establish evidence proving that the company abused its dominant position on the marked diesel fuel markets and thus decided to terminate the investigation;

12. The Supreme Administrative Court of Lithuania agreed to renew court proceedings concerning a major anti-competitive agreement on the biofuel market as requested by the Lithuanian competition authority. According to the authority, when examining the dispute, the Court improperly applied and interpreted legal norms related to the relevant market definition. Therefore, the Competition Council requested the Court to renew court proceedings. Having noted that renewal might be only be sought in exceptional cases, the Court decided to satisfy the request of the authority;

13. The Supreme Administrative Court of Lithuania upheld the Competition Council’s decision to terminate the investigation into the decisions of the Minister of Energy in the absence of the breach of Article 4 of the Law on Competition. The Court indicated that the rules of Article 4 of the Law on Competition differ from the rules of state aid.

2.1.4. Waste management

14. The Competition Council found that Panevėžys City Municipality failed to comply with the authority’s obligation to terminate the contract with the municipal company and organise a competitive procedure regarding the provision of municipal waste management services. The infringement of the Law on Competition the Competition Council resulted in a fine of EUR 34,200 for the Municipality. It has been the first case when the Competition Council exercised its right to impose sanctions against public administrative bodies since 2017 when the amendments to the Law on Competition entered into force;

15. Case is pending before the court of last instance as to the authority’s decision whereby UAB Ekoaplinka, UAB Ecoservice and UAB Marijampolės švara concluded a collusive bidding agreement in the public procurement for the purchase of waste collection and transportation services.

16. The Supreme Administrative Court of Lithuania rejected the appeals by Panevėžys City Municipality and the company Panevėžys specialus autotransportas and upheld the Competition Council’s decision whereby the Municipality was found to have breached the Law on Competition by authorising its company to provide municipal waste management services without a competitive procedure.

2.1.5. Construction

17. Vilnius Regional Administrative Court upheld the landmark Competition Council’s decision whereby two major Lithuanian construction companies were fined for elaborate joint bidding. The Competition Council discontinued an investigation into suspected anti-competitive joint-bidding between other construction firms in other tenders for renovation and upgrading works, as not falling within its enforcement priorities.
2.1.6. Other investigations
18. The Competition Council found that the Lithuanian Chamber of Notaries and members of its Presidium entered into a cartel agreement by setting the amount of notary fees (where the fees were not subject to regulation) and agreeing upon their calculation procedure. The Competition Council imposed EUR 88,400 fine on the Lithuanian Chamber of Notaries, and fines ranging from EUR 100 to EUR 20,800 on eight members of the Presidium;
19. The Lithuanian competition authority found that 26 driving schools and the Lithuanian association of driving schools were involved in a cartel that set prices of driving lessons in three cities of Lithuania. The aforementioned anti-competitive agreement resulted in fines for companies – EUR 574,400 in total;
20. Ongoing investigation into the suspected abuse of dominance by the provider of postal services AB Lietuvos pastas;
21. The Competition Council found that Klaipėda City Municipality granted privileges to its municipal company by authorising it to provide operation and installation services of traffic control measures without a competitive procedure. The infringement of the Law on Competition the Competition Council resulted in a fine of EUR 22,000 for the Municipality;
22. The Competition Council approved commitments in a fintech case, that were submitted by one of the major banks Swedbank during an investigation for a potential breach of Law on Competition. The commitments ensured that Swedbank cannot hinder provision of competing financial services (Payment initiation services) under specific principles thereby allowing more competition for the benefit of consumers.

2.2. Summary of activities of competition authorities
23. In 2018 the authority launched 13, continued 13 investigations, issued 4 decisions (excluding decisions on unfair or misleading advertising).
24. Launched:
   • Anti-competitive agreements – 6
   • Abuse of dominance – 2
   • Unnotified mergers – 0
   • Anti-competitive actions by public administrative bodies – 5
25. Continued:
   • Anti-competitive agreements – 8
   • Abuse of dominance – 2
   • Unnotified mergers– 0
   • Anti-competitive actions by public administrative bodies – 3
26. Decisions issued (identified infringement):
   • Anti-competitive agreements –2
   • Abuse of dominance – 0
• Unnotified mergers – 0
• Competition restricting actions by public administrative bodies – 2

2.3. Summary of activities of courts

27. According to national laws, the authority’s decisions may be appealed both on procedural and substantive grounds. As of December 31, 2018, there were 26 decisions, including those of procedural nature, under examination at courts of various instances.

28. In 2018:
  • 12 decisions were appealed;
  • 8 decisions were upheld by courts;
  • 1 decision was partly amended;
  • 1 decision was annulled, however, the Court of final instance decided to reopen its proceedings and no final resolution has been adopted;
  • 1 case was terminated.

29. In 2018 courts upheld 90 per cent of the decisions and requests of the Competition Council.

30. Some of the most significant court decisions:
  • The Supreme Administrative Court of Lithuania agreed to renew court proceedings concerning an anti-competitive exclusivity agreement on the biofuel market as requested by the Competition Council. The reason to renew court proceedings was an improper application of legal norms related to the relevant market definition.
  • For the first time the Court of First Instance imposed penalties on the managers of undertakings for the involvement in a prohibited agreement concluded between competitors upon the request by the Competition Council. The Court’s decision is now final.
  • The Supreme Administrative Court of Lithuania upheld the Competition Council’s decision whereby the largest cinema chain Forum Cinemas encouraged its competitors, namely, Multikino Lietuva and Cinamon Operations, to refrain from applying discounts to blockbuster movies during the first two weeks of their screenings. In addition, owners of the cinemas in the cities of Vilnius and Kaunas restricted discounts and fixed prices for certain movies in support of Forum Cinemas initiative.
  • The Supreme Administrative Court of Lithuania upheld the Competition Council’s decision to terminate the investigation into the decisions of the Minister of Energy in the absence of the breach of Article 4 of the Law on Competition. The Court indicated that the rules of Article 4 of the Law on Competition differ from the rules of state aid. The Competition Council’s decision concerned the energy sector.
  • The Supreme Administrative Court of Lithuania upheld the Competition Council’s decision which established that Panevėžys City Municipality granted privileges to its municipal company Panevėžio specialus autotransportas and restricted competition in the municipal waste management sector.
2.3.1. Description of significant cases, including those with international implications.

31. **27 April.** The Competition Council found that the Lithuanian Chamber of Notaries and members of its Presidium concluded an anti-competitive agreement by setting the amount of notary fees and agreeing upon their calculation procedure. During the investigation the authority also analyzed legal provisions regulating the setting of notary fees. Having evaluated current legislation and its practical application, the Council sent recommendation to the Government to initiate amendments to the Law on Notaries and eliminate the obligation on the Ministry of Justice to negotiate notary fees with the Lithuanian Chamber of Notaries, a self-government institution which unites all notaries. On 21 November 2018 amendments to the Law of Notaries and the Law on Bailiffs came into force which eliminated the obligation on the Ministry of Justice to negotiate notary fees with the Chamber of Notaries and the Chamber of Bailiffs.

32. **12 June.** The authority approved commitments in a fintech case, that were submitted by one of the major banks Swedbank during an investigation for a potential breach of Law on Competition. The commitments ensured that Swedbank cannot hinder provision of competing financial services (Payment initiation services) under specific principles thereby allowing more competition for the benefit of consumers.

33. **17 December.** The Competition Council found that 26 driving schools and the Lithuanian association of driving schools were involved in a cartel that set prices of driving lessons in three cities of Lithuania. The investigation revealed that in collaboration with the Association 15 schools in Vilnius agreed to increase the prices for driving lessons of all categories (A, B, C, CE, D) and their combinations. Additionally, it was sought to achieve that the same price level prevailed in other driving schools in Vilnius. Cartel participants owning parking lots used for car driving practices even threatened to terminate parking lot lease contracts with their competitors if they failed to stick to the agreed price level.

34. After many years of enforcement and advocacy in 2017 the Competition Council has been entrusted with a power to impose monetary fines on public bodies. For the first time in the Lithuanian case law the Competition Council used this power in 2018 and imposed sanctions (EUR 56,200 in total) on two municipalities for the infringements of the Law on Competition.

2.4. Mergers and acquisitions

2.4.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;

35. The authority received 38 filings between 1 Jan and 31 Dec 2018: 7 mergers led to an in-depth review.

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Partly cleared mergers (permission to individual concentration actions) | 0 | 0 | 0 | 0

2.4.2. Summary of significant cases.

36. **18 April.** *Rimi Lietuva (RIMI)* failed to implement merger remedies which the authority approved as a condition when clearing the acquisition and thus the merger was effectively blocked. According to the Competition Council’s decision of 18 October 2017, *RIMI* undertook to divest part of its retail business to prevent this merger from restricting competition on certain local retail markets, however, the proposed buyers did not meet the set criteria.

37. **14 June.** *Telia Lietuva* withdrew its merger notification submitted to the Competition Council in February 2018. The company decided to abandon the merger after receiving preliminary market assessment from the authority. According to the preliminary conclusions of the Competition Council, the market shares in some of the markets concerned would increase significantly and the proposed merger would have a negative impact on competition and consumers.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

38. According to the Law on Competition, the Lithuanian competition authority is empowered to carry out expert examination of draft laws and other legal acts, issue opinions regarding the effect on competition to the Parliament of the Republic of Lithuania and the Government of the Republic of Lithuania, as well as submit proposals to the Government of the Republic of Lithuania to amend legal acts restricting competition.

39. Last year the authority examined draft legal acts and issued 410 proposals to public administrative bodies advising how to avoid negative impacts on competition and the freedom of economic activity. 80 per cent of our proposals were taken into consideration by responsible institutions.

40. Additionally, the authority sent 8 warnings to public administrative bodies regarding the alleged competition law breaches.

41. The Competition Council was also active in providing guidance and training on how contracting authorities could use the possibility to exclude an operator if the contracting authority has compelling evidence (i.e. sufficiently plausible indications) to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition. Although the provisions of the Law on Public Procurement do not provide an obligation for the purchasing authorities to ask the Competition Council whether there was collusion among the bidders, they still tend to address the authority for consultation. When providing consultations to the contracting authorities by phone or e-mail, the experts of the Competition Council also consult the contracting authorities individually on the application of the indicated legal ground of exclusion in specific cases.

42. Furthermore, the authority enjoyed the benefits brought by the interinstitutional cooperation model between the Lithuanian competition authority, Special Investigation Service (responsible for fighting corruption) and Public Procurement Office, which resulted from the signing of the Memorandum of Understanding between the three institutions in the beginning of...
2017. This project has led to regular meetings, more intensive information exchange, reciprocal consultations and common investigations between the three institutions.

43. Last year the Lithuanian competition authority sent 655 official letters:
   - 2 to the President of the Republic of Lithuania;
   - 28 to the Seimas of the Republic of Lithuania;
   - 37 to the Government of the Republic of Lithuania;

44. Topics addressed in 10 most important letters:
   - Public disclosure of information on food retail prices (Government and Ministry of Agriculture);
   - Conclusions of the dairy market study conducted by the Competition Council and the situation in the raw milk sector (Ministry of Agriculture);
   - Actions of the National Health Insurance Fund under the Ministry of Health encouraging companies supplying nappies to agree on the compensation paid for the customers by the National Health Insurance Fund;
   - Actions of the Ministry of Social Security and Labour encouraging supermarkets to agree on the working hours of their employees;
   - Regulation of profit margins of large supermarkets (Ministry of Economics and Innovation and the Government);
   - Regulation of profit margins for private label sales of large supermarkets (Ministry of Economics and Innovation);
   - Regulation and public disclosure of information on the supermarkets’ profit margins (Member of the Parliament);
   - Amendments to the rules concerning the fines for the infringement of Law on Advertising and recovery of the fines imposed under the Law on Competition, as well as amendments to the Law on Legislative Framework regarding competition impact assessment of law drafts;
   - The need to change the Law on Advertising concerning the implementation of the Regulation 2017/2394;
   - Proposed amendments to the Law on the Prohibition of Unfair Practices of Retailers, especially regarding new measures protecting suppliers and additional monitoring functions for the Competition Council.

45. 91 meetings with lawmakers, ministry officials or other government leaders.

46. Topics addressed in 10 most important meetings:
   - The Lithuanian Government’s plan to fight inflation;
- Amendments to the Law on Higher Education and Research;
- Amendments to the to the Law on Local Self-Government;
- Draft Law on the Accumulation of Pensions;
- Funding of the Competition Council;
- Amendments to the Law on Management, Use and Disposal of State and Municipal Assets;
- Draft Law on Pharmacy, healthcare system;
- Draft Law on Management of State Information Resources;
- Application of competition law to legal professions;
- Law on Alcohol Control.

4. Resources of competition authorities

4.1. Resources overall (current numbers and change over previous year):

- 71 as of 31 December 2018.
- 68 as of 31 December 2017.

4.1.1. Annual budget (in your currency and USD):

- EUR 2.50 m EUR, USD 2.81 m (2018)
- EUR 2.29 m EUR, USD 2.58 m (2017)

4.1.2. Number of employees (person-years):

- • economists: the authority had 5 dedicated economists as of 31 Dec 2018.
- • lawyers: 41;
- • other professionals: 6;
- • support staff: 19;

All staff combined: 71.

4.2. Human resources (person-years) applied to:

- • Enforcement against anticompetitive practices: 9 (anti-cartel)
- • Merger review and enforcement: 9 (these people are also dealing with abuse of dominance issues, thus there is full overlap of staff in these two fields)
- • Advocacy efforts: 14 (in addition to 9 non-administrative members of staff from the Communications Division and Unfair Commercial Practices Investigation Group):
  o 5 Council Members
  o 2 lawyers of Law and Competition Policy Group
2 lawyers of Anti-Competitive Agreements Investigation Group
2 lawyers of Public Administrative Bodies Supervision Group
2 lawyers of Dominant Undertakings and Mergers Supervision Group
1 Chief Adviser

4.3. Period covered by the above information:
1 Jan 2018 to 31 Dec 2018.

5. Summaries of or references to new reports and studies on competition policy issues

- “Designing Publicly Funded Healthcare Markets” (OECD)
- “Taxi, Ride-sourcing and Ride-sharing Services” (OECD)
- “Challenges and Co-ordination of Leniency Programmes” (OECD)
- “Excessive Pricing in Pharmaceutical Markets” (OECD)