

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

Annual Report on Competition Policy Developments in Estonia

-- 2018 --

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

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Estonia

1. About the authority

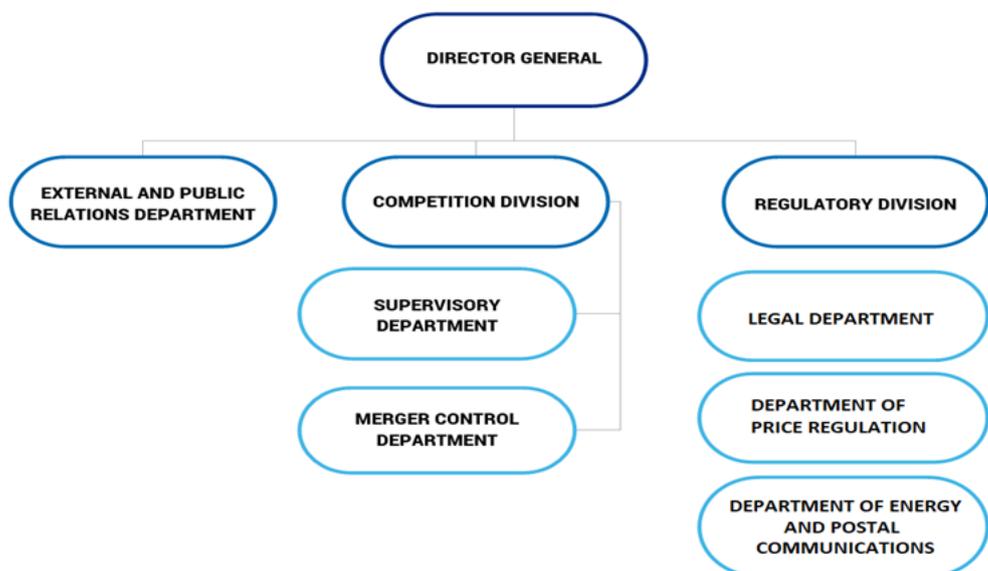
1. The Estonian Competition Authority exercises supervision in the fields of competition, electricity, natural gas, district heating, postal services, public water supply and sewerage and railways. In addition, the Authority settles disputes regarding airport fees. The Competition Authority is in the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

3. The Competition Authority employed 41 people as of the end of the year 2018, and 37 were civil servants and 4 were employees. The Authority employed 30% of men and 70% of women. The average age of a staff member was 45 years and the average years of service at the Authority was 12 years.

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

Figure 1. Structure of the Competition Authority



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 Estonian Competition Authority has very good relations and cooperation with colleagues from neighbouring countries. Often the undertakings are active in many neighbouring countries and authorities are facing similar challenges. Annual meetings take place with Latvian, Lithuanian and Finnish colleagues for discussing competition as well as regulatory issues.
12. The Authority has contributed to cooperation and foreign aid projects whenever possible in terms of human resources.
13. Just as important as international cooperation is developing cooperation on a national level with both public sector authorities and undertakings or unions thereof.

3. Competition supervision

14. 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. Prohibited cooperation between real estate brokerage operators

15. At the beginning of 2017, real estate portal kv.ee informed the real estate brokerage companies that from 1 April, the price discounts in force until that date for real estate brokerage operators with over ten agents will be abolished.
16. Accepting such new contract terms would have resulted in a four-fold increase in the total cost of the service for large real estate brokerage operators. This strongly annoyed a number of real estate brokerage operators, so some of them started planning activities against the kv.ee portal. The first announcements of such activities of real estate brokerage operators became public at the end of March 2017 and at the beginning of April by newspaper articles and the press releases published by the companies themselves.
17. Based on the data published in the media, in April 2017, the Competition Authority initiated criminal proceedings against eleven real estate brokerage operators.
18. In the course of the proceedings, the Competition Authority found that in February 2017, 11 companies competing in the real estate market namely OÜ Kinnisvarabüroo Uus Maa, Arco Real Estate AS, AS Ober-Hausi Kinnisvara, Pindi Kinnisvara OÜ, AS Domus Kinnisvara Vahendus OÜ, LAAM Kinnisvara OÜ, LVM Kinnisvara OÜ, CKE Kinnisvara OÜ, RE Kinnisvara AS, 1Partner Kinnisvara Tallinn OÜ and OÜ Kinnisvaraekspert, concluded an agreement distorting competition and with the collaboration of Association of Real Estate Companies of Estonia conducted coordinated activities.
19. According to the suspicion of the Competition Authority, competitors agreed that they would not accept the pricing conditions of the announcements to be published in the real estate portal kv.ee and the prices formed on their basis. The operators also confirmed to each other that they would stop publishing ads in the real estate portal kv.ee if AllePal OÜ does not change the price conditions and make the price of the service more favorable. As the company managing the real estate portal kv.ee stuck to the original proposal for the amendment of the terms and conditions of the contract, the above eleven real estate

companies terminated the valid contracts with the real estate portal kv.ee before the new pricing conditions came into force. According to the suspicion, the chief executive of the Association of Real Estate Companies of Estonia helped to conclude the agreement primarily as an intermediary for the kv.ee portal.

20. Under competition law, each undertaking must decide independently how it intends to behave on the market, i.e., if the undertakings agree with each other on how they intend to operate on the market, it is an infringement of competition law. The Competition Act applies both to agreements between undertakings and to the decision of the association of undertakings. This is particularly the case where the decision of the decision affects the autonomous economic behavior of the members of the association. It is also important to emphasize that while the agreement may have other legal objectives, it does not mean that the Competition Act does not apply. Thus, the pursuit of a legitimate aim does not preclude an agreement which distorts competition.

21. The Competition Authority is of the opinion that the emergence of a legal problem could have been prevented if each real estate brokerage operator had independently decided on its behavior against the kv.ee real estate portal, including whether to continue the contract or terminate it and, if so, under what conditions and in what amount.

22. The Public Prosecutor's Office ended the proceedings with opportunism and imposed financial obligations on the undertakings. The biggest obligation was imposed to Pindi Kinnisvara OÜ (5,000 euros), the obligation imposed to other companies ranged from 650 to 4,500 euros, and one natural person opted for community service instead of financial obligation. In total, financial obligations were imposed for the amount of approximately 57 thousand euros.

3.2. The obligation offered by Gaasivõrgud AS for the implementation of single invoice

23. The Competition Authority conducted supervisory proceedings to verify the compliance of the activities of AS Gaasivõrgud with the Competition Act.

24. Eesti Energia AS filed a complaint to the Authority that the activities of AS Gaasivõrgud are in conflict with the Competition Act, as equal treatment of market participants is not guaranteed. AS Gaasivõrgud is the largest gas distribution network operator in Estonia, which has important means and dominant position within the meaning of the Competition Act. As a subsidiary of AS Eesti Gaas, AS Gaasivõrgud offered a solution to consumers where a single invoice for both the network service and the gas sold was presented. This advantage was also used as a sales argument why the consumer should choose AS Eesti Gaas as a gas seller. This created a significant competitive advantage over other non-network gas sellers who lacked the ability to submit a single invoice.

25. In the course of the proceedings, the Competition Authority asked, among other things, from nine gas sales companies whether they considered it important to allow the submission of a single invoice in terms of competitive conditions and consumer interests and whether they had approached AS Gaasivõrgud on this issue. The interest in providing a single invoice is primarily with those sellers who have a significant number of residential customers and who know the customer's desire to receive a single invoice for gas and network service consumption. As a rule, it was noted that such an option is important in terms of competitive conditions.

26. AS Gaasivõrgud provided the Authority with an indicative action plan for the provision of a single invoice and described problems that prevented the process from being implemented faster.

27. In its preliminary assessment of the plan submitted by the company, the Competition Authority noted that a situation where a single invoice can be submitted by only one market participant is a distortion of competition between gas sellers and gives AS Eesti Gaas a competitive advantage. According to the Competition Act, an undertaking in a dominant position is prohibited from offering or implementing different conditions for different business partners in the case of equivalent agreements, putting some of them at a disadvantage. In order to avoid the risk of violation of the Competition Act, AS Gaasivõrgud should also create an opportunity for offering single invoice for other gas sellers as soon as possible. Otherwise, the Authority considered it possible for issuing a precept to an undertaking. The Authority asked the undertaking to submit an action plan with deadlines for the introduction of a single invoice for all gas suppliers.

28. AS Gaasivõrgud filed an application with the Authority to terminate the supervision proceeding with assuming an obligation. The purpose of the obligation was to develop a single invoicing technical solution and applicable standard terms and to provide a possibility of submitting a single invoice for all sellers. Pursuant to the Competition Act, an undertaking whose activities may violate §§ 4 or 16 of the Competition Act or Article 101 or 102 of the Treaty on the Functioning of the European Union, and for which the Competition Authority is considering imposing an obligation to eliminate the violation by a precept, may submit an application to the Authority for assuming the obligation.

29. The Authority is of the opinion that the obligation offered by AS Gaasivõrgud effectively eliminates the competition concerns referred to by the Authority in its initial assessment and precept warning. In the opinion of the Authority, it is important that the gas sellers interviewed during the procedure have not expressed a substantive opposition to the application of AS Gaasivõrgud to assume the obligation. The Authority found that the undertaking offered by the undertaking was necessary and sufficient to address the competition situation and that it was not appropriate to continue the supervision proceeding. The Competition Authority obliged AS Gaasivõrgud to comply with the proposed obligation and to inform the Authority of the obligation to complete the operational phases.

3.3. Excessively high prices for ancillary waste transport services

30. In previous years, the Competition Authority has repeatedly addressed the fees for ancillary waste transport services set by waste transport undertakings, which tend to be too high. The waste carrier may only charge a cost-based fee for the various ancillary services for which the consumer has no choice. Such ancillary services are different smaller services related to waste transportation, such as opening the gate, moving the container to the waste vehicle, etc. The validity of such a position specifically in terms of gate opening service has also been confirmed by the courts. As a rule, the amount of surcharges is not assessed in the waste transport competitions, which is why the waste carriers have been free to set them at their own discretion. In 2018, the Authority also closed two cases of surcharges for the transport of waste.

3.3.1. Price of opening the gate set by Tallinn Waste Centre

31. Tallinn Waste Centre carries out organized waste transport in several Tallinn areas. According to the price list of services, the fee for opening the gate, door, barrier, etc., with a key, remote control, card, short code (hereinafter gate opening service) on a monthly basis with VAT is 7.10 euros. Several consumers turned to the Authority, who estimated that the fee charged for the gate opening service established by the Tallinn Waste Centre was unreasonably high when using the basic service only once a month. Thus, if the consumer uses the service only once a month, the monthly price will even exceed the price of the basic service. Therefore, in its initial position, the Authority found that the fee charged by the operator for opening the gate can be unreasonably high if the opening operation is carried out once a month and the service user cannot order a one-off service.

32. The Tallinn City Government changed the price list during the proceedings (from 01.02.2018) by adding a fee for the service of opening the gate for 1-2 times to the price of the monthly gate opening service. The corresponding fee is 4.80 euros including VAT. If the consumer uses the service three or more times a month, the monthly gate opening, etc., the price will apply in the amount of 7.10 euros plus VAT. In this case, the gate opening service became less expensive for the consumer by 2.30 euros if the consumer only used the service once a month. Although the fee for opening the gate 1-2 times is higher than the equivalent fee in the price lists of other waste carriers, this results from the conditions of public procurement organized by the Tallinn City Government, where no one-off fee was provided. If the Tallinn City Government were to impose an even less expensive one-off fee, the Tallinn Waste Centre would already bear a loss on this service. On the other hand, as only the monthly fee was provided for in the public procurement conditions, it became relatively favourable, so that the monthly fee applied by the Tallinn Waste Centre is generally less expensive compared to the equivalent fee of other waste carriers.

3.3.2. The over price of ancillary service set by OÜ Ekovir

33. In the waste transport area organized by the City of Kohtla-Järve, OÜ Ekovir established the price of 1.99 euros for the ancillary services of the municipal waste collection and transportation services in the price list “Moving the container with waste shafts from the elevated site, 1 container (0.8 m3).” The Competition Authority found that moving containers from elevated space is not part of organized municipal waste transport, but is a related service. This ancillary service is not needed by anyone for anything else than for being provided with a waste transport service. In other words, it is an ancillary service enabling to provide the basic service, and it is not separable from the basic service. As OÜ Ekovir has no reasonable alternative to the service offered to the waste owners, OÜ Ekovir held a dominant position in the container handling service. The Competition Authority assessed the cost of lifting the container from the elevated platform and the time it took to lift the container from the elevated platform and concluded that the fee of moving the container established by OÜ Ekovir from the elevated platform was unfair within the meaning of the Competition Act.

34. The Competition Authority dealt with this case both in the supervision proceedings, where the precept obliged the company to lower the price of the service so that it would not exceed 0.50 euros once with the transfer of the container, as well as a misdemeanour whereas the operator was punished by a fine.

3.4. Recommendation for controlling the price of waste transport

35. The Competition Authority sent a recommendation to local governments to ensure transparency in retroactive changing of the prices offered on the procurement of waste transportation. The recommendation relates to a practice where the actual transportation rate does not arise during the procurement, but after the conclusion of the procurement contract if the carrier submits a price increase request to the local government. Local governments should not allow price increase ex post facto unless the conditions for applying for them were unequivocally and comprehensively foreseen for the participants in the procurement.

36. The Authority investigated how the carriers selected as a result of the waste transport contracts organized by the local authorities have applied for price increases during the procurement period and on what basis such requests have been granted. The Authority found that in recent years price increases have spread throughout Estonia during the procurement period. This practice will pave the way for tenderers who deliberately do not show all their foreseeable costs in public procurement, but will submit them to the local government as a separate application after winning the procurement. In fact, it is not even a viable option for companies competing at the procurement to offer a realistic price if significant business risks can be mitigated once the procurement has been won by submitting a price increase request. Consequently, the competition loses its meaning. The damage is on the one hand in the rise in prices for the consumer and, on the other hand, to the elimination of competitors who did not prove to be the winner due to the higher price.

37. The procurement documents and the waste management rules must describe as precisely as possible what costs are manageable by the operator and which are not. The local government does not need to lightly release the company that won the procurement from its business risk. The rise in the consumer price index and wage costs over three to five years should not surprise any entrepreneur. It is known to the Authority that in recent years there has been considerable fluctuation in the cost of waste disposal. This does not mean that the local government should comply with the requests of the carrier in all such cases. The cost increases and the lack of more affordable alternatives must be demonstrated by the carrier who applies for the price increase.

4. Control of concentrations

38. The main purpose of the control of concentrations is to avoid creation or strengthening of dominant position of an undertaking, which may give rise to a significant impediment to effective competition. 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 two million euros.

39. In 2018, the Authority conducted 52 concentration related proceedings, 45 concentration notices were submitted in 2018 and seven notices were brought over from the previous year. The Authority granted 43 permissions to concentration, in 40 cases thereof the Authority made decisions in the 30 calendar days prescribed in the Competition Act. In six cases the Authority decided to initiate supplementary proceedings and two supplementary proceedings were brought over from 2017.

40. Supplementary proceeding is carried out in order to ascertain whether the concentration subject to control does or does not involve anti-competitive circumstances. According to the law, the maximum length of the supplementary proceeding is four months.

41. During the supplementary proceedings two permissions to the concentrations were granted (AS Eesti Meedia and HTR Direct OÜ and CMS Production OÜ; Enefit Green AS and Nelja Energia AS); in one case (AS Alexela Oil and Euro Oil Aktsiaselts) the permission was granted with obligations; in one case (OÜ R-S Valdus and part of Aktsiaselts Väätsa Prügila) the concentration was prohibited; in one case the Authority ended the proceedings, because the concentration was subject to being controlled by the European Commission; in one case the Authority ended the proceedings due to the withdrawal of the concentration by the parties and in two cases the proceedings were continued in 2019.

42. The breakdown by types of concentration was as follows:

- An undertaking acquired control of the whole or part of the other undertaking in case of 44 concentrations (Competition Act § 19 (1) p 2);
- Undertakings jointly acquired control of the whole or a part of another undertaking in the case of 6 concentrations (Competition Act § 19 (1) p 3);
- Undertakings merged within the meaning of the Commercial Code in one case (Competition Act § 19 (1) p 1);
- A natural person already controlling at least one undertaking acquired control of the whole or a part of another undertaking, or of several undertakings or parts thereof in one case (Competition Act § 19 (1) p 4).

43. The Authority conducted proceedings in the following sectors:

- Road maintenance
- Commercial property
- Production and sale of concrete elements
- Sale and logging of forest
- Production of metal construction
- Wholesale and retail sales of motor vehicles
- Pharmacies
- Publishing of magazines
- Sea container terminals
- Extraction and sale of aggregates (limestone, gravel, sand)
- Insurance services
- Activities of travel agencies and tour operators
- Retail of motor fuels
- Online sales of electronics
- Sale and production of energy

- Services of advertising agency
- Waste handling
- Parking services
- Catering services
- Port services
- Distribution of radio advertising
- Marketing communications and advertising brokerage
- Operation of TV-channels
- Sale of wood-aluminium windows
- Transport services (rail transport, road transport, river transport)
- Wholesale of alcoholic beverages
- Healthcare, hospitals
- Demolition work
- Retail business and wholesale trade
- Dental services
- E-commerce.

44. The majority of concentrations (39) took place between Estonian undertakings and in the case of three concentrations both parties were foreign undertakings. In ten cases, the concentration involved both undertakings registered abroad and undertakings registered in Estonia.

4.1. Prohibition of concentration of OÜ R-S Valdus and Aktsiaselts Väätsa Prügila

45. On 21 September 2018, the Competition Authority prohibited the concentration in the waste management sector. With this transaction, OÜ R-S Valdus, a subsidiary of Ragn-Sells AS, intended to acquire the Väätsa landfill.

46. The concentration procedure revealed that the concentration would affect in particular two vertically-related waste management services: (i) municipal waste collection and transport; and (ii) final disposal of mixed municipal waste at landfills. The Competition Authority has established that the principle of proximity applies to the transport of mixed municipal waste to landfills, i.e., mixed municipal waste is primarily transported to the nearest landfill. Therefore, all landfills do not compete with each other for receiving municipal waste from different regions of Estonia. It was also found that there is no competitive pressure between the waste incineration unit of Iru Power Plant, which burns a significant proportion of mixed municipal waste collected in Estonia, and the landfills. As a result of these conclusions, the Competition Authority defined the geographical scope of the final disposal of mixed municipal waste in landfills more narrowly than the entire territory of Estonia. Considering the impact area of the Väätsa landfill, the Competition Authority assessed the impact of the concentration in the Central and Southern Estonia region. In this area, Ragn-Sells has only one competitor in the region on collecting and transporting municipal waste - Eesti Keskkonnateenused AS. At the final disposal of mixed

municipal waste at the Väätsa landfill, there is also only one main competitor - Paikre landfill. In a situation with such concentrated market structures, the Competition Authority estimates that the concentration would distort competition in both product markets. Concentration of vertically-related municipal waste management services to one company would give it significant advantages over the few competitors and, according to the Competition Authority, would distort competition.

47. Ragn-Sells made proposals for assuming obligation for avoiding distortion of competition resulting from the concentration. The proposed obligations included the application of public and uniformly applicable price list for receiving mixed municipal waste at the Väätsa landfill or, alternatively, receiving mixed municipal waste at the Väätsa landfill through procurement procedures. In assessing the proposed commitments, the Competition Authority took the position that, regardless of how the conditions for receiving mixed municipal waste at the Väätsa landfill would be changed, as a result of the Ragn-Sell would have the motivation and incentive to favor itself as a vertically integrated undertaking. Therefore, the obligations proposed do not prevent the competitive pressure resulting from the concentration.

48. The concentration decision has been appealed to the Tallinn Administrative Court.

4.2. Completion of the proceedings of Eesti Keskkonnateenused AS and Tallinna Kommunaalteenused OÜ

49. On 26 October 2018, the Competition Authority made a decision to terminate the concentration proceedings for companies providing street cleaning services in Tallinn. With this transaction, Eesti Keskkonnateenused AS intended to acquire the business of street cleaning services of the private limited company N&V Tallinn.

50. Street cleaning services are provided only in major cities, and the service provider is selected through procurement. When analyzing the market, the Competition Authority found that most of the companies providing street cleaning services in Estonia operate only locally in one city. Similarly, the successful tenderers in the repeated procurements in the same region have been successful tenderers of the previous procurements. Therefore, the Competition Authority assessed that the geographic scope of the provision of street cleaning services is local rather than nationwide and often city-based.

51. As a result of the concentration, Eesti Keskkonnateenused AS would have achieved a 70% - 80% share of Tallinn street cleaning areas and 60% -70% share of annual street cleaning costs in Tallinn. It would have been a second successive concentration with which Eesti Keskkonnateenused AS intended to acquire its direct competitor in Tallinn, which has proved to be a more successful tenderer in both of the tenders where both have participated. The previous concentration was the acquisition of OÜ Jaakson Linnahoodus, for which Eesti Keskkonnateenused AS was authorized by the Competition Authority on 23.09.2016. As a result of the acquisition of Tallinna Kommunaalteenused OÜ, only one company would have remained competing with Eesti Keskkonnateenused AS. Therefore, the product market structure would have become significantly less competitive. Leaving the market by one of the major participants in the Tallinn street cleaning services procurement would have significantly reduced the power of Tallinn Municipal Service Department as the major organizer of procurements and the largest buyer of services, as the selection of service providers in many procurements would have decreased from three to two. In addition, the analysis of participation in previous tenders and the responses of other companies offering street cleaning services revealed that the potential competition

pressure for the provision of street cleaning services in Tallinn is weak. The Competition Authority estimates that the concentration would have significantly damaged competition in the provision of street cleaning services in Tallinn.

52. In order to prevent distortion of competition arising from the concentration, Eesti Keskkonnateenused AS submitted various behavioral obligations that the Competition Authority did not consider appropriate. Subsequently, Eesti Keskkonnateenused AS filed an application for the withdrawal of the concentration notice informing them that the parties to the concentration had decided to withdraw the concentration.

4.3. The concentration of Enefit Green AS and Nelja Energia AS

53. In November 2018, the Competition Authority granted permission to the concentration of Enefit Green AS, a subsidiary of Eesti Energia Aktsiaselts, and Nelja Energia AS. Eesti Energia Aktsiaselts is a vertically integrated company owned by the state and active in several fields of activity. In addition to the generation, wholesale and retail of electricity, the company's activities include, among others, mining, processing, and transport of oil shale, management of a distribution network, balance provider services, and electrical discharge services. Nelja Energia AS is engaged in the production of electricity from renewable energy sources (wind, biogas).

54. The Competition Authority received objections to the concentration from several companies. The main objections concerned the definition of the product market. For example, it was claimed that electricity produced from renewable energy sources constitutes a separate product market and that the geographic scope of the product market is limited to Estonia. It was also pointed out that prior to the concentration, Eesti Energia Aktsiaselts already holds a dominant position in the generation and wholesale of electricity. Objections were also raised concerning the impact of the concentration on other product markets (in particular on the product market for maintenance and repair of wind generators) and on a number of issues not directly related to the concentration.

55. There was a horizontal overlap between the business activities of the parties to the concentration in the market for the generation and sale of electricity. Similarly to the practice of the European Commission, the Competition Authority did not distinguish between electricity produced from renewable energy sources and other energy sources. Electricity is a homogeneous product. For example, in terms of use, the electricity produced from renewable energy sources does not differ from electricity produced from oil shale. Electricity wholesale in Scandinavia and the Baltics is generally carried out through the Nord Pool power exchange. In Estonia, Eesti Energia Aktsiaselts sells all the produced electricity through the Nord Pool power exchange, except for marginal quantities for direct line customers, and Eesti Energia Aktsiaselts buys electricity from the stock exchange for other group activities. Approximately 95% of all electricity produced in Estonia is sold through Nord Pool, while smaller manufacturers sell directly to the electricity retailer (mostly the same group company). The wholesale of electricity takes place in a similar manner in the Nordic and Baltic countries.

56. The vast majority of electricity (over 99%) is sold on a day-ahead market. The object of the deal is the obligation to deliver to the buyer a certain amount of electricity at a certain hour of the next day. Market participants submit offers to the market for the purchase or sale of electricity at a certain price, and the price of electricity on the market is determined by the supply/demand ratio. Electricity producers offer electricity for sale in the price area where their production capacity is located. Eesti Energia Aktsiaselts sells the

production of its Estonian power plants in the Estonian price area of the Nord Pool power exchange. As a market manager, Nord Pool has a responsibility to ensure that market prices in the different price areas are as uniform as possible. EUPHEMIA (Pan-European Hybrid Electricity Market Integration Algorithm) is the mathematical algorithm applied to in the entire Scandinavian and Baltic electricity market to ensure a more efficient distribution of electricity in the system, taking into account system constraints (transmission capacity, system losses, etc.) and offers made in different price areas for the purchase and sale of electricity. When solving the optimization task, trans-national commercial flows in transmission cables, and prices in each region are revealed every hour. As a result of the optimization activity, generally, uniform prices are created in the price areas with sufficient transmission capacity. The prerequisite for uniformization in the optimization of prices is the existence of transmission cables between price areas. Connection cables allow commercial transmission of electricity from one price area to another. Connection cables are generally operated by transmission network operators (Elering AS in Estonia and Fingrid Oyj in Finland).

57. When assessing the concentration, the Competition Authority needed to determine whether the acquisition of control by Eesti Energia Aktsiaselts over Nelja Energia AS alters the structure of the product markets in such a way as to cause significant harm to competition. Thus, it was first necessary to define which product markets were affected by the concentration and then to assess the competitive situation and its change in those product markets. In the case of this concentration, the Competition Authority defined the market for the generation and wholesale of electricity with the geographic scope covering Estonia and Finland, the product market for the retail sale of electricity in Estonia and the product market of supply of wind turbine repair and maintenance services (the exact geographic scope of the market was left open in this case).

58. Concerning the generation and wholesale of electricity, the following arguments supported the definition of the geographic market covering Estonia and Finland:

- Operation of Nord Pool power exchange and principles of price formation (price optimization through an algorithm).
- In 2017, prices were identical in 98% of hours, and there was a very strong correlation between Estonian and Finnish prices (correlation 0.99).
- There has been little congestion between Estonia and Finland.
- The analysis of the security of supply of the system operator covers a wider area than Estonia - Elering AS takes into account the regional level in its analysis of the security of supply.

59. The Competition Authority concluded that the concentration would increase the concentration of production assets necessary for the generation of electricity on Estonian territory, but in the conditions of the Nord Pool power exchange, the producers of electricity holding production assets in Finland will compete with the parties to the concentration. In addition, the Nord Pool power exchange system operates in a way that also other electricity producers in the Baltic States exert competitive pressure. As a result of the optimizing activities of Nord Pool AS, as a market operator, generally uniform prices are created in price areas with sufficient transmission capacity. The prerequisite for uniformization in the optimization of prices is the existence of transmission cables between price areas. In Estonia and Finland, electricity prices in 2018 were identical in 98% of hours, which indicates the integration of two price areas. In 2017, the market share of Eesti Energia Aktsiaselts and Nelja Energia AS in the product market was 14%. In the Nordic and Baltic

countries as a whole, the parties to the concentration account for about 2.5% of the generation and wholesale of electricity. Considering the principles of operation of the Nord Pool power exchange, the position of Eesti Energia Aktsiaselts in the market for the generation and wholesale of electricity and the dependence of wind energy production on the weather conditions, the Competition Authority had no reason to conclude that Eesti Energia Aktsiaselts would be able to influence electricity prices significantly and independently of other electricity producers.

60. The Competition Authority estimates that this concentration will not reduce the opportunities for electricity retailers to buy electricity, as wholesale of electricity takes place through the Nord Pool power exchange. Of the parties to the concentration, only Eesti Energia Aktsiaselts is engaged in the retail sale of electricity.

61. The objections to the concentration also concerned the possible distortion of competition in the market for the provision of maintenance and repair services for wind turbines. These services are provided by Empower 4Wind OÜ, an operator under the joint control of Nelja Energia AS and Empower Aktsiaselts. The fact that, following the concentration, Empower 4Wind OÜ is therefore subject to joint control by Eesti Energia Aktsiaselts and Empower Aktsiaselts does not, according to the Competition Authority, significantly distort competition in the provision of maintenance and repair services for wind turbines. Eesti Energia Aktsiaselts has to carry out public procurement for the purchase of wind turbine maintenance and repair services, and after the concentration, the obligation to purchase services will extend to the wind turbines operated by Nelja Energia AS prior to the concentration.