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Annual Report on Competition Policy Developments in Lithuania

-- 2019 --

10-12 June 2020

This report is submitted by Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

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Contents

| | |
|--|-----------|
| Lithuania | 3 |
| Executive Summary | 3 |
| 1. Changes to competition laws and policies, proposed or adopted | 4 |
| 1.1. Summary of new legal provisions of competition law and related legislation | 4 |
| 1.1.1. Amendments to the Law on Competition: | 4 |
| 1.1.2. Amendments to the Law on the Prohibition of Unfair Practices of Retailers, | 4 |
| 1.2. Other relevant measures, including new guidelines..... | 4 |
| 1.3. Government proposals for new legislation | 5 |
| 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. Summary of activities of: | 5 |
| 2.1.2. Description of significant cases, including those with international implications. | 6 |
| 2.2. Mergers and acquisitions | 7 |
| 2.2.1. Statistics on number, size and type of mergers notified and / or controlled under competition laws; | 7 |
| 2.2.2. Summary of significant cases..... | 7 |
| 3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies | 8 |
| 4. Resources of competition authorities..... | 10 |
| 4.1. Resources overall (current numbers and change over previous year): | 10 |
| 4.1.1. Annual budget (in your currency and USD): | 10 |
| 4.1.2. Number of employees (person-years): | 10 |
| 4.2. Human resources (person-years) applied to:..... | 10 |
| 4.3. Period covered by the above information: | 10 |
| 5. Summaries of or references to new reports and studies on competition policy issues | 10 |

Lithuania

Executive Summary

When rating ourselves, we assess how successfully we managed to meet our long-term strategic goals: maximising consumer welfare, making impactful competition advocacy and becoming a more efficient authority.

Starting with consumer welfare, our public commitment is that every euro put into our authority's budget brings at least 5 euros of expected direct financial benefit to consumers. In 2017–2019 we exceeded that commitment by reaching the ratio of 1:6.3. In 2019 financial benefit was created by, among others, making two cable TV operators to withdraw merger notification due to identified competition concerns as well as by accepting commitments in the case regarding unilateral actions of incumbent postal operator. Moreover, for the first time in 10 years of estimation of financial benefit, we have taken into account our enforcement against anti-competitive decisions of public authorities. The updated methodology allowed us to assess enforcement actions against the decision of Klaipėda municipality whereby this body awarded exclusive rights allowing the operator to pursue economic activity without conducting any competitive selection procedure. On a broader and uncalculated scale, a positive impact on consumer welfare is expected to stem from amendments enacted in 2019 which have imposed a duty on the lawmakers to conduct competition assessment of proposed regulatory acts.

In terms of established antitrust infringements, we fined companies for two bid-rigging cartels. One of them was a long-term (2012-2017) market sharing agreement between three competitors to collude in public tenders on street and road repair and land melioration works. Enforcement against large-scale cartels is given a priority in the strategy of Lithuanian competition authority.

The highlight of our 2019 advocacy efforts has been a series of initiatives relating to anti-competitive agreements. Having become the third EU competition watchdog capable of paying financial rewards to individuals who blow the whistle, the authority through different media channels encouraged persons to report cartels. To this end, the authority established a new [tool](#) on the website allowing persons to report cartels to the authority anonymously. Furthermore, the authority sent personal letters to 1000 directors of the biggest Lithuanian companies reminding about their duty to comply with competition law and ways to avoid competition law infringements.

Lastly, a number of legislative amendments have resulted in making Lithuanian competition authority more capable of ensuring effective competition. In addition to the power to remunerate persons who report a cartel, the authority has been granted a power to impose fines for a broader range of procedural infringements and an ability to impose structural remedies with a view to terminating an antitrust infringement. Further improvements in terms of empowerment will follow in 2020 after the full transposition of the ECN+ Directive. What is more, the Lithuanian competition authority has transferred its functions relating to the supervision of misleading and comparative advertising to the State Consumer Rights Protection Authority, which had already supervised some advertising activities before the amendments. Thus, functions related to advertising have been concentrated within the single organization while the Lithuanian competition authority can now have an even sharper focus on competition matters.

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. Amendments to the Law on Competition:

The authority received the power to award a remuneration of 1% of the imposed fines (capped at EUR 100,000) to persons who provide evidence enabling the Competition Council to detect anti-competitive agreements.

In order to seek the termination of a competition law breach, the Competition Council is now entitled to oblige an infringer to change the structure of a company, e. g., sell a part of it;

Infringers are obliged to pay fines or provide a financial guarantee proving that the fine will be paid, without waiting for the final court rulings regarding the appealed decisions of the authority;

According to the amendments to the Law on Legislative Framework, lawmakers are obliged to conduct the assessment of impact on competition of any proposed legislative measures when such impact is possible in order to reduce the number of instances where the proposed regulation might result in restrictions of competition. Upon the request of the drafters, the Competition Council is entitled to advise them on the methods for assessing the effects on competition, as well as to conduct the monitoring of the implementation of the authority's recommendations to avoid anti-competitive actions and, if necessary, to take measures against public entities to eliminate the identified concerns.

The Competition Council is also entitled to impose sanctions on undertakings for new categories of procedural infringements (e.g. disregarding of interim measures).

1.1.2. Amendments to the Law on the Prohibition of Unfair Practices of Retailers,

resulted in new measures to protect suppliers and more powers to the Competition Council. Firstly, retailers are prohibited from asking commercial discounts or any other type of remuneration from the suppliers if this has not been agreed upon in writing. Secondly, suppliers are protected from retaliation if they apply to the court or to the Competition Council regarding the possible infringement of this law. Thirdly, the Competition Council is in charge of monitoring the contracts between retailers and suppliers and other actions by retailers, as well as of the application of the guidelines of good practices between retailers and suppliers.

1.2. Other relevant measures, including new guidelines

The Competition Council created / updated the guidelines on: a) the payment of fines imposed by the authority; b) the provision of information on the state aid transparency public search page; c) unfair commercial practices by retailers; d) leniency program; e) compensation for damages resulting from competition law infringements.

The Competition Council's advocacy efforts received international recognition in the *Antitrust Writing Awards*. The [Guidelines](#) "Activities of associations: how to avoid competition law infringements" prepared by the Council's experts have been selected among the four best soft laws under "Concerted Practices" category.

1.3. Government proposals for new legislation

Amendments to the Law on Competition were submitted to the Government in order to transpose the EU Directive ECN+ into the national law. The proposal is still under assessment by the Lithuanian Government. The main proposed changes include additional safeguards with regard to independence and adequacy of resources, clarification on joint several liability of legal persons constituting single economic entity, successors' liability, provisions on co-operation between the EU Member States (regarding cross-border enforcement of fines, assistance in conducting dawn raids and notification of documents).

2. Enforcement of competition laws and policies

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

2.1.1. Summary of activities of:

Competition authorities;

In 2019 the authority launched 7, continued 8 investigations, issued 4 decisions.

Launched:

- Anti-competitive agreements – 4
- Breach of merger control proceedings – 1
- Abuse of dominance – 0
- Anti-competitive actions by public administrative bodies – 2

Continued:

- Anti-competitive agreements – 4
- Abuse of dominance – 2
- Anti-competitive actions by public administrative bodies – 2

Decisions issued (identified infringement):

- Anti-competitive agreements – 2
- Obstruction of an investigation – 1
- Abuse of dominance – 0
- Competition restricting actions by public administrative bodies – 1

Courts;

According to national laws, the authority's decisions may be appealed both on procedural and substantive grounds. As of December 31, 2019, there were 35 decisions, including those of procedural nature, under examination at courts of various instances.

In 2019:

- 10 decisions were appealed;

- 4 decisions were upheld by courts (2 upheld decisions regarding misleading advertising; 1 upheld decision regarding the authority's refusal to open an investigation into the actions of Vilnius City Municipality; 1 upheld decision regarding a competition law infringement by Vilnius City Municipality);
- 1 decision was partly upheld, however, the Court of first instance decided to refer one question back to the Competition Council.

In 2019 courts upheld 93 per cent of the decisions and requests of the Competition Council.

Most important of them:

- companies *Ecoservice* and *Marijampolės švara* were found to have been *legitimately* fined for bid-rigging in the public tender for municipal waste collection and transportation services;
- *the court confirmed that Žagarės inžinerija* and *Rovaltra* rigged their bids in the public procurement for the purchase of technical equipment and agreed in advance on the winner of the tender;
- the court restricted the right of the directors of *Media medis* and *Ministerium* to occupy managerial positions and imposed fines for their involvement in a cartel.

2.1.2. Description of significant cases, including those with international implications.

Antitrust enforcement

In 2019 the Competition Council adopted 3 decisions in the field of antitrust enforcement. In two of them the companies were fined for bid-rigging agreements. In one of the cases the authority also found two companies guilty of obstructing the authority's officials in carrying out inspection and obtaining documents relevant for the investigation. A total of EUR 1.4 million fines was imposed for anti-competitive agreements as a result of the investigative actions of the Competition Council.

Additionally, the authority closed an abuse of dominance investigation into *Lietuvos paštas* after the postal firm committed to informing other providers about pricing changes in advance and not to create obstacles to competitors operating in the same market. The Competition Council announced that these commitments proposed and assumed by *Lietuvos paštas* are appropriate and sufficient to eliminate the competition concerns, therefore, the investigation into a suspected abuse of a dominant position was terminated.

Public administrative bodies

The role of the Competition Council in enforcing the specific rules that prohibit restrictions of competition on the part of public bodies has been significantly strengthening over the years. One of the main reasons is that the effect of such conduct on the market may oftentimes be very if not more significant than that of private conduct. 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. In 2019 Vilnius City Municipality was found to have granted privileges to its municipal company by entrusting it with the provision of swimming pool services, which resulted in competition distortions and EUR 31,500 fine.

2.2. Mergers and acquisitions

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

The authority received 28 filings between 1 Jan and 31 Dec 2019:

4 mergers led to an in-depth review.

| | 2019 | 2018 | 2017 | 2016 | 2015 |
|---|------|------|------|------|------|
| Received filings | 28 | 38 | 24 | 39 | 38 |
| Mergers cleared | 22 | 36 | 23 | 37 | 36 |
| Mergers cleared with remedies and commitments | 0 | 0 | 1 | 1 | 0 |
| Challenged mergers | 4 | 1 | 1 | 2 | 1 |
| Mergers withdrawn | 1 | 2 | 1 | 1 | 1 |
| Partly cleared mergers (permission to individual concentration actions) | 0 | 0 | 0 | 0 | 0 |

2.2.2. Summary of significant cases.

The Competition Council sought to block the acquisition of 100 per cent of *UAB Splius* by *UAB Cgates*. On 5 July 2019, *Cgates* withdrew its merger notification submitted to the authority in January 2019. The company decided to abandon the merger after receiving preliminary market assessment of the CC. The preliminary conclusions of the Competition Council, the analysis of market shares of the merging companies, as well as the evaluation of pricing and proximity of competitors showed that after the merger *Cgates* would be able to increase the price of paid television and Internet access services to consumers in the city of Šiauliai as one of the lowest-price operators in the market would cease to exist and the company would face lower competitive pressure.

On 2 February 2019 the Competition Council cleared the acquisition of 100 per cent and sole control of *UAB Keturi kambariai* which manages the coffeehouse chain *Caffeine* by the Norwegian company *Reitan Convenience*. When examining the merger notification the authority applied for and received explanations from the merging parties, as well as from undertakings engaged in the distribution of press, coffee, food, confectionery, soft drinks and tobacco products. One market participant distributing periodicals and books expressed an opinion that if *Caffeine* became a retail press distributor, the merger could negatively affect the retail and wholesale distribution of publications, as well as the management of convenience shops. Despite the aforementioned opinion, the Competition Council did not identify any signs that the merger could have a negative impact on the market. The authority concluded that although *Caffeine* coffee shops, as well as *Narvesen* and *Lietuvos spauda* kiosks sell similar goods (coffee, food and confectionery, tobacco products, soft drinks and press publications), their extent, quality and target groups are essentially different. Therefore, the proposed merger was cleared.

On 4 October 2019 the Competition Council cleared the acquisition of 70 per cent of *Polimeta* shares (together with the currently owned shares – 90 per cent) and sole control by *L3S*. *L3S* engages in the management of subsidiaries, as well as the buying up, processing and sales of base metal scrap. The activities of *Polimeta* were also related to the buying up, processing and sales of base metal scrap and raw materials containing base metal.

On 31 October 2019 the Competition Council cleared the acquisition of 100 per cent of *GV Group* and 100 per cent of *Serviso kontraktų centras* shares, also indirect acquisition of 100 per cent of *Emtoservis* shares, and sole control of the aforementioned companies by

Aviteļos prekyba. *Aviteļos prekyba* is engaged in the retail and wholesale of household and electronic appliances, and provision of other related services. Besides, the company and its related undertakings are engaged in the leasing of real estate, provision of advertising services. *GV Group*, which owns the shops and e-shop of *Elektromarkt*, was also engaged in the retail and wholesale of household and electronic appliances, and the provision of other related services. *Serviso kontraktų centras* was selling extended warranties of household and electronic appliances. Its related undertaking *Emtoservis* offered the services relating to the warranties of household and electronic appliances, as well as provided non-warranty services.

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

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.

Last year the authority examined 394 draft legal acts and issued and submitted comments regarding 116 of them:

- in response to the authority's expressed concerns that granting exclusive rights to *Lietuvos paštas* to deliver social allowances to the Lithuanian residents could breach the principle of fair competition, the Seimas refused to change the existing regulation. Private companies will still be able to provide the aforementioned services if they ensure better competitive conditions than *Lietuvos paštas*;
- the Seimas cancelled the draft of the Retail Tax Law, which we recommended to submit to the European Commission to evaluate whether the taxes envisaged only for a certain group of market players could be qualified as state aid;
- the authority submitted to the Government opinion that amendments to the timber trade procedure, which would favor certain groups of undertakings, may restrict effective competition;
- The Competition Council, together with the Public Procurement Office and the Special Investigation Service, proposed to preserve the existing regulation of in-house contracts, ensuring effective competition, however, the Seimas decided that local authorities are allowed to authorise municipal companies to provide certain services without organising a public tender.

Additionally, the authority sent 13 warnings to public administrative bodies regarding the alleged competition law breaches.

Last year the Lithuanian competition authority sent 573 letters, out of which:

- 549 to different ministries (Ministry of Environment, Ministry of Energy, Ministry of Finance, Ministry of National Defence, Ministry of Culture, Ministry of Social Security and Labour, Ministry of Transport and Communications, Ministry of Health of the Republic, Ministry of Education, Science and Sports, Ministry of Justice, Ministry of Economy and Innovation, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Agriculture);

- 4 to the President of the Republic of Lithuania;
- 9 to the Seimas of the Republic of Lithuania;
- 8 to the Government of the Republic of Lithuania;
- 1 to the Prosecutor General;
- 1 to the Chief Official Ethics Commission;
- 1 to the State Enterprise Centre of Registers.

Topics addressed in 10 most important letters:

1. Amendments to the Law on Public Procurement regarding exclusive conditions for in-house contracts;
2. Regulation of UPS (Universal Postal Services);
3. Regulation of vehicle maintenance;
4. Rules of state and municipality property use and disposal;
5. Market of lottery organization and distribution of lottery tickets in Lithuania;
6. Liberalization of Lithuanian railway market;
7. Publication of milk purchase prices.
8. Interpretation of definition of group of associated undertakings under Competition Act;
9. Air services agreements with other non-EU countries;
10. Competition Council's actions on interbank borrowing offered rate (VILIBOR) in 2008-2009.

The authority had 66 meetings with lawmakers, ministry officials or other government leaders.

Topics addressed in 10 most important meetings (the majority of them focused on the improvement of legal acts which are likely to cause competition restrictions):

1. Amendments to the Forest Law;
2. Amendments to the Law on Public Procurement;
3. Amendments to the Law on Local Self-Government;
4. Amendments to the Law on the Social Insurance;
5. Amendments to the Law on Environmental Pollution Tax;
6. Amendments to the Law on Pharmacy;
7. Amendments to the Law on Social Enterprises;
8. Amendments to the Law on Construction Law;
9. Regulation regarding the trading and pricing of medicaments.
10. Transposition of ECN+ Directive.

4. Resources of competition authorities

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

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

- EUR 2.53 m, USD 2.73 m (2019)
- EUR 2.50 m, USD 2.70 m (2018)

4.1.2. Number of employees (person-years):

As of 31 Dec 2019 there were:

- economists – 4;
- lawyers – 38;
- other professionals – 3;
- support staff – 16;
- all staff combined – 61.

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

- Enforcement against anticompetitive practices: anti-cartel – 23; dominance/antimonopoly: 22.
- Merger review and enforcement – 22;
- Advocacy efforts 12.

4.3. Period covered by the above information:

1 January 2019 to 31 January 2019.

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

“Competition for-the-market” (OECD), [http://kt.gov.lt/uploads/documents/files/DAF-COMP-GF-WD\(2019\)39_en.pdf](http://kt.gov.lt/uploads/documents/files/DAF-COMP-GF-WD(2019)39_en.pdf)

“Access to the case file and protection of confidential information” (OECD), [http://kt.gov.lt/uploads/documents/files/DAF-COMP-WP3-WD\(2019\)64_en.pdf](http://kt.gov.lt/uploads/documents/files/DAF-COMP-WP3-WD(2019)64_en.pdf)

“The standard of review by courts in competition cases” (OECD), [http://kt.gov.lt/uploads/documents/files/DAF-COMP-WP3-WD\(2019\)21_en.pdf](http://kt.gov.lt/uploads/documents/files/DAF-COMP-WP3-WD(2019)21_en.pdf)

“Digital Disruption in Financial Markets” (OECD), [http://kt.gov.lt/uploads/documents/files/DAF-COMP-WD\(2019\)29_en.pdf](http://kt.gov.lt/uploads/documents/files/DAF-COMP-WD(2019)29_en.pdf)